

LINE-ITEM VETO

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

S.J. Res. 26

A JOINT RESOLUTION PROPOSING AN AMENDMENT TO THE CONSTITUTION AUTHORIZING THE PRESIDENT TO DISAPPROVE OR REDUCE AN ITEM OF APPROPRIATIONS

S.J. Res. 178

A JOINT RESOLUTION PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES TO ALLOW THE PRESIDENT TO VETO ITEMS OF APPROPRIATION

S. 1921

A BILL TO ALLOW THE PRESIDENT TO VETO ITEMS OF APPROPRIATION

APRIL 9, 1984

Serial No. J-98-110

Printed for the use of the Committee on the Judiciary



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1984

39-216 O

5521-23

COMMITTEE ON THE JUDICIARY

STROM THURMOND, South Carolina, *Chairman*

CHARLES McC. MATHIAS, Jr., Maryland	JOSEPH R. BIDEN, Jr., Delaware
PAUL LAXALT, Nevada	EDWARD M. KENNEDY, Massachusetts
ORRIN G. HATCH, Utah	ROBERT C. BYRD, West Virginia
ROBERT DOLE, Kansas	HOWARD M. METZENBAUM, Ohio
ALAN K. SIMPSON, Wyoming	DENNIS DeCONCINI, Arizona
JOHN P. EAST, North Carolina	PATRICK J. LEAHY, Vermont
CHARLES E. GRASSLEY, Iowa	MAX BAUCUS, Montana
JEREMIAH DENTON, Alabama	HOWELL HEFLIN, Alabama
ARLEN SPECTER, Pennsylvania	

VINTON DeVANE LIDE, *Chief Counsel and Staff Director*

DEBORAH K. OWEN, *General Counsel*

DEBORAH BERNSTEIN, *Chief Clerk*

MARK H. GITENSTEIN, *Minority Chief Counsel*

SUBCOMMITTEE ON THE CONSTITUTION

ORRIN G. HATCH, Utah, *Chairman*

STROM THURMOND, South Carolina	DENNIS DeCONCINI, Arizona
CHARLES E. GRASSLEY, Iowa	PATRICK J. LEAHY, Vermont

STEPHEN J. MARKMAN, *Chief Counsel and Staff Director*

RANDALL R. RADER, *General Counsel*

CAROL EPPS, *Chief Clerk*

ROBERT E. FEIDLER, *Minority Chief Counsel*

CONTENTS

STATEMENTS OF MEMBERS

	Page
Hatch, Hon. Orrin G., a U.S. Senator from the State of Utah, chairman, Subcommittee on the Constitution	1
Thurmond, Hon. Strom, a U.S. Senator from the State of South Carolina, chairman, Committee on the Judiciary	3

PROPOSED LEGISLATION

S.J. Res. 26, a joint resolution proposing an amendment to the Constitution authorizing the President to disapprove or reduce an item of appropriations	5
S.J. Res. 178, a joint resolution proposing an amendment to the Constitution of the United States to allow the President to veto items of appropriation.....	7
S. 1921, a bill to allow the President to veto items of appropriation	9

CHRONOLOGICAL LIST OF WITNESSES

Dixon, Hon. Alan J., a U.S. Senator from the State of Illinois.....	11
Hatfield, Hon. Mark O., a U.S. Senator from the State of Oregon	18
Edwards, Hon. Mickey, a U.S. Representative from the State of Oklahoma.....	23
Schultz, Peter, professor, Catholic University; and John Palffy, policy analyst, The Heritage Foundation, Washington, DC.....	33
Mattingly, Hon. Mack, a U.S. Senator from the State of Georgia	41

ALPHABETICAL LIST AND MATERIAL SUBMITTED

Dixon, Senator Alan J.:	
Testimony	11
Article, "Restoring Veto Power," from the Washington Post, October 19, 1983	17
Edwards, Representative Mickey:	
Testimony	23
Prepared statement	26
Article, "A Conservative's Case Against The Line Item Veto," from the Washington Post, February 8, 1984	30
Hatfield, Senator Mark O.:	
Testimony	18
Article, "For the Record," from the Washington Post, October 20, 1983.....	22
Mattingly, Senator Mack: Testimony.....	41
Palffy, John:	
Testimony	47
Article, "Line-Item Veto: Trimming the Pork," from Backgrounder, April 3, 1984	50
Schultz, Peter:	
Testimony	33
Prepared statement	34

APPENDIX

ADDITIONAL SUBMISSIONS FOR THE RECORD

Reports:	
"An Item Veto for the President?" by Russell M. Ross and Fred Schwen- gel, from Presidential Studies Quarterly	63

	Page
Reports—Continued	
"The Propriety of the Negative—the Governor's Partial Veto Authority," by Arthur J. Harrington, from <i>Marquette Law Review</i> , vol. 60:865	77
"Proposals for Line-Item Veto Authority," by American Enterprise Insti- tute for Public Policy Research	102
"Observations on the Item Veto," by Vernon L. Wilkinson, reprinted in House Committee on the Judiciary hearing, May 27, 1957	137
Statements of:	
Donald T. Regan, Secretary of the Treasury	172
James R. Thompson, Governor, State of Illinois	182
Letters from:	
Robert J. Spitzer to Senator Orrin G. Hatch, with enclosure, April 11, 1984	184
Representative Bill Gradison, to Dear Colleague, January 30, 1984	193
Newspaper and magazine articles:	
"Get-Serious Time," from the <i>Wall Street Journal</i> , June 9, 1982	194
"Line-Item Leash on Runaway Spending," by Henry Hazlitt, from the <i>Wall Street Journal</i> , September 9, 1983	195
"Budget Solution," from the <i>Wall Street Journal</i> , September 14, 1983	197
"Take Your Pick," from the <i>Wall Street Journal</i> , September 22, 1983	199
"What if the President Could Veto Parts of a Bill?" from the <i>Wall Street</i> <i>Journal</i> , September 22, 1983:	
Lewis K. Uhler, president, National Tax-Limitation Committee	200
Robert W. Bergstrom	200
Senator Alan J. Dixon	201
"Stop the Merry-Go-Round," from the <i>Wall Street Journal</i> , October 7, 1983	201
"Pursue Strings Politics," by Richard E. Cohen, from the <i>National Jour-</i> <i>nal</i> , November 26, 1983	202
"The Budget Play," from the <i>Wall Street Journal</i> , December 16, 1983	204
"Partial Veto: A Surrender, or a Deficit Remedy?" By Martin Tolchin, from the <i>New York Times</i> , January 4, 1984	205
"Reagan To Seek a Law Allowing Him To Veto Items in Money Bills—Is His Aim To Reduce Budget or Cut Embarrassment? Passage Seems Unlikely," by Laurie McGinley, from the <i>Wall Street Journal</i> , January 5, 1984	206
"Reagan's Deficit-Cutting Bid May Spotlight Line-Item Veto—Proposal Would Amend Constitution," by Dal Tate, from the <i>Congressional</i> <i>Quarterly</i> , January 21, 1984	209
"Small Business Held Favoring Line-Item Veto," from the <i>Journal of</i> <i>Commerce</i> , January 27, 1984	211
"Bargain Government," by George F. Will, from the <i>Washington Post</i> , January 27, 1984	212
"That Veto," by Fred Graham, from the <i>Washington Post</i> , January 27, 1984	213
"Democrats Considering Veto Right—Move Seen Forcing President To Act on Budget Cutting," by T.R. Reid and Juan Williams, from the <i>Washington Post</i> , January 28, 1984	214
"Reagan Told of Line-Item Veto Hurdles," by Juan Williams, from the <i>Washington Post</i> , January 30, 1984	215
"The Line-Item Veto Would Give President New Budget Leverage," by Richard L. Strout, from the <i>Christian Science Monitor</i> , January 30, 1984	216
"Baker Suggests Alternative to Line-Item Veto," by Helen Dewar, from the <i>Washington Post</i> , January 31, 1984	217
"Ronald Reagan's Veto," from the <i>Wall Street Journal</i> , January 31, 1984	218
"Vetoes and Deficits," from the <i>Christian Science Monitor</i> , February 1, 1984	219
"Reagan's Item-Veto Request Is Matter of Enlightenment," by Herman Belz, from the <i>Los Angeles Times</i> , February 6, 1984	220
"Congress Plays Election-Year Politics With Line-Item Veto Proposal— The Perennial Issue Has Some Legislative Backing, But Its Prospects Are Dim Without More Vocal Public Support and Understanding of What It Would Do," by Richard E. Cohen, from the <i>National Journal</i> , February 11, 1984	222
"The Veto Debate: Different Times, Different Tempers," by Suzanne Gar- ment, from the <i>Wall Street Journal</i> , February 17, 1984	225

	Page
Newspaper and magazine articles—Continued	
“Senate Rejects Line-Item Veto Idea,” by Helen Dewar, from the Wash- ington Post, May 4, 1984.....	227
“Senate, 56-34, Rejects New Veto Authority,” from the New York Times, May 4, 1984.....	228
“U.S. Mayors Seek Law To Let President Veto Individual Items in Bills,” from the Wall Street Journal, June 19, 1984.....	228
“An Item Veto Won’t Work,” by Benjamin Zycher from the Wall Street Journal, October 24, 1984.....	229

LINE-ITEM VETO

MONDAY, APRIL 9, 1984

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON THE CONSTITUTION,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:35 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Orrin G. Hatch (chairman) presiding.

Present: Senator Strom Thurmond, chairman of the Committee on the Judiciary.

Staff present: Redick Bowman, Jr., full committee; Stephen J. Markman, chief counsel and staff director, Subcommittee on the Constitution; Randall R. Rader, general counsel; Carol A. Epps, chief clerk; and Deborah Dahl, clerk.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH, CHAIRMAN, SUBCOMMITTEE ON THE CONSTITUTION

Senator HATCH. Good morning, Senator Dixon, nice to have you here.

In his state of the Union address on January 25, 1984, President Ronald Reagan proposed some fundamental improvements in our national budgeting process. He noted that:

Some 43 of our 50 States grant their Governors the right to veto individual items in appropriation bills without having to veto the entire bill. California is one of those 43 States. As Governor, I found this line-item veto was a powerful tool against wasteful or extravagant spending. It works in 43 States. Let us put it to work in Washington for all the people. It would be most effective if done by Constitutional amendment. The majority of Americans approve of such an amendment just as they and I approve of an amendment mandating a balanced Federal budget.

By mentioning the line-item veto in conjunction with the balanced budget and tax limitation amendment, the President seems to suggest appropriately that a line-item veto amendment might not be necessary at all if the House of Representatives had concurred with the Senate last year in adopting the balanced budget amendment to control indiscriminate Federal spending.

An item-veto amendment is based on the theory that the power of the Chief Executive should be strengthened to check Federal spending. Because under the Constitution the President must approve or disapprove a bill in its entirety, he is faced with the dilemma of vetoing an entire spending bill which funds vital Government services because it also contains some extravagant or unnecessary items. President Eisenhower described this dilemma in the

following words: "The necessity of accepting or rejecting a bill in its entirety prevents the President from considering separable provisions on their own merit." The item-veto amendment intends to remove this all-or-nothing decision from the President and authorize him to veto only the items within a bill which he finds objectionable.

Presidents Reagan and Eisenhower are not the only Chief Executives to have requested line-item veto authority. In fact, at least five other Presidents have expressed their support for such a change in the Constitution. They are Presidents Grant, Hayes, Arthur, Franklin D. Roosevelt, and Truman.

As this list of Presidential supporters for a line-item veto amendment suggests, this is not a new concept. A provision for vetoing portions of bills first appeared in the Constitution of the Confederacy. Robert H. Smith, author of this first American item veto, explained that the President needs power "to arrest corrupt or illegitimate expenditures and at the same time approve other parts of the bill." Since the Civil War, every new State added to the Union, with the exception of Nevada, has granted its Governor some form of item-veto power. Usually it has been limited to appropriation bills.

The first proposal to amend the U.S. Constitution to provide an item veto came from Representative James C. Faulkner of West Virginia in 1876. Since then over 140 similar proposals have been introduced in Congress. In over 100 years since the first item-veto proposal appeared in Congress, only four hearings have been held on the subject. Today's hearing is the first in more than a quarter of a century. It is ironic that no hearings have been held on this subject for 27 years during which time the Federal Government has run a deficit in all but two years, and the Federal debt has grown from \$474 billion to nearly \$1½ trillion.

As we begin this hearing, two primary obstacles currently prevent the President from exercising a line-item veto. The first, of course, is the Constitution. Article I, section 7, requires explicitly that "every bill," not portions of bills, be approved or rejected by the President. No language in the Constitution even hints at a line-item veto authority for the Chief Executive. Moreover, the Constitutional Convention never discussed the possibility of an item veto, and no President has ever presumed to exercise such power in the absence of constitutional authorization. Unless amended, the Constitution itself precludes a line-item veto.

Beyond this obvious barrier, an item-veto authority for the President also faces opposition from noted scholars and national leaders. These critics often agree that Federal spending has become the constitutional crisis of this decade. They contend, however, that the Constitution itself deals with crises by limiting governmental authority, rather than by creating new Federal powers. They argue that Congress should attack the spending crisis by preserving the constitutional principle of limited government embraced by the balanced budget amendment, rather than by altering the revered constitutional separation of powers doctrine.

An item-veto amendment would upset the balance of power between the branches, these critics contend, by granting the President power over the Nation's purse which the Constitution framers

wisely allocated primarily to the legislative branch. Some critics even argue that an item veto would complicate the problem of indiscriminate spending, because Congress might evade difficult spending decisions by opting for more spending and "passing the buck" to the President to make the hard budget-cutting choices.

During this hearing, and in subsequent hearings on this topic, we will explore all points of view concerning the item-veto constitutional amendment proposal. Regardless of the merits of this particular tool against extravagance in Federal expenditures, the conclusion is practically undeniable that this Nation and this Congress must address themselves to the greatest constitutional crisis of our lifetime—the systemic bias in favor of indiscriminate Federal consumption of the national wealth.

In that regard, I would like to note at the beginning of this hearing, that the subcommittee invited each of the living former Presidents to attend the hearing. Although their schedules did not permit them to attend this morning, President Ford sent the following letter, which is relevant to our topic.

DEAR MR. CHAIRMAN: Thank you for the invitation to appear before the Constitution Subcommittee of the Senate Judiciary Committee on April 9th or 10th on the issue of the line-item veto.

Although I will be in Washington, D.C. the evening of the 9th, my long standing previous commitments preclude me from appearing before the Subcommittee. I arrive, from California, at 4:16 p.m., on the 9th, and must return to California at 8:45 a.m. on the 10th. Regrettably, there are firm commitments at both ends of my trip.

I do support a proposed Constitutional amendment for a Presidential line-item veto authority. I, therefore, hope Congress in 1984 will approve by a two-thirds vote in both the Senate and House such a proposal. It will then be the responsibility of 75 percent of the 50 States to act. That is always time-consuming.

Because I am deeply disturbed by the size of the forecast "out-year" Federal deficits in fiscal years 1985, 1986 and 1987 and the urgency for maximum Executive tools to meet that critical problem I also recommend that Congress rescind, in 1984, the provisions of the Budget Reform and Anti-Impoundment Act of 1974 that deny Presidential "Impoundment Authority." Such Congressional action, as you know, would restore in effect a line-item veto authority and give to the White House considerable budget expenditure control in reducing those sizable out-year deficits. The "deferral" and "rescission" provisions in the 1974 Act have not worked to reduce Federal Government expenditures.

I wish you and your colleagues my very best on this important responsibility.

I am very pleased to have that letter.

[The following was received for the record:]

PREPARED STATEMENT BY HON. STROM THURMOND, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA, CHAIRMAN, COMMITTEE ON THE JUDICIARY

Mr. Chairman, I want to commend you for holding this hearing on a proposed constitutional amendment to give the President the power of a line-item veto. I congratulate you on the leadership that you continue to show in the area of national fiscal responsibility.

For at least the last decade, the problem of deficit spending by the Federal government and the concomitant problem of a compounding national debt have been the focal point of criticism of Federal fiscal practice. This increased awareness of the severity and persistent nature of these problems has spawned various suggestions as to how this situation could be corrected. One of the possible solutions which has been proffered is the line-item veto.

Simply stated, the item veto would place in the Chief Executive the power to disapprove a line item or individual statement of the government's allocation of funds to a particular purpose. This power would apply to appropriations contained in both acts and joint resolutions. However, this authority would not apply to appropriations for the legislative and judicial branches of the government.

There are several different variations on this general concept. For example, under Senate Joint Resolution 26, the proposal we consider today, the President would also be empowered to reduce an item of appropriation, as well as totally reject it.

Further, under this measure, only a simple majority vote of each House would be necessary for the Congress to override an item veto, as opposed to the two-thirds vote normally required to reverse such a presidential act. Last, this concept has been put forth in both constitutional amendment and statutory forms.

As of this time, 43 States have this budgetary device available in some form. When I was Governor of South Carolina, the line-item veto proved to be a most useful fiscal tool. On January 25, 1984, President Reagan gave the concept of an item veto his endorsement in his State of the Union Address. I, too, support it and have become a cosponsor of S. 1921, which was introduced by the able Senator from Georgia, Mr. Mattingly.

I will be interested in hearing the testimony on the relative advantages and disadvantages of the constitutional amendment and statutory approaches. Accordingly, I look forward to hearing from our slate of witnesses today.

98TH CONGRESS
1ST SESSION

S. J. RES. 26

Proposing an amendment to the Constitution authorizing the President to disapprove or reduce an item of appropriations.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 1 (legislative day, JANUARY 25), 1983

Mr. DIXON introduced the following joint resolution; which was read twice and referred to the Committee on the Judiciary

JOINT RESOLUTION

Proposing an amendment to the Constitution authorizing the President to disapprove or reduce an item of appropriations.

1 *Resolved by the Senate and House of Representatives*
2 *of the United States of America in Congress assembled*
3 *(two-thirds of each House concurring therein), That the fol-*
4 *lowing article is proposed as an amendment to the Constitu-*
5 *tion of the United States, which shall be valid to all intents*
6 *and purposes as part of the Constitution if ratified by the*
7 *legislatures of three-fourths of the several States within*
8 *seven years after its submission to the States for ratification:*

1 "ARTICLE —

2 "The President may reduce or disapprove any item of
3 appropriation in any Act or joint resolution, except any item
4 of appropriation for the legislative branch or the judicial
5 branch of the Government. If an Act or joint resolution is
6 approved by the President, any item of appropriation con-
7 tained therein which is not reduced or disapproved shall
8 become law. The President shall return with his objections
9 any item of appropriation reduced or disapproved to the
10 House in which the Act or joint resolution containing such
11 item originated. The Congress may, in the manner prescribed
12 under section 7 of article I for Acts disapproved by the Presi-
13 dent, reconsider any item disapproved or reduced under this
14 section, except that only a majority vote of each House shall
15 be required to approve an item which has been disapproved
16 or to restore an item which has been reduced by the Presi-
17 dent to the original amount contained in the Act or joint
18 resolution."

○

98TH CONGRESS
1ST SESSION

S. J. RES. 178

Proposing an amendment to the Constitution of the United States to allow the President to veto items of appropriation.

IN THE SENATE OF THE UNITED STATES

OCTOBER 5 (legislative day, OCTOBER 3), 1983

Mr. MATTINGLY (for himself, Mr. DOLE, Mr. GOLDWATER, Mr. NICKLES, Mr. SYMMS, Mr. DENTON, Mr. TRIBLE, Mr. GARN, Mr. HATCH, Mr. LAXALT, Mr. KASTEN, Mr. MURKOWSKI, Mr. HUMPHREY, Mr. WILSON, Mr. HELMS, Mr. ARMSTRONG, Mr. THURMOND, and Mr. WARNER) introduced the following joint resolution; which was read twice and referred to the Committee on the Judiciary

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States to allow the President to veto items of appropriation.

1 *Resolved by the Senate and House of Representatives*
2 *of the United States of America in Congress assembled*
3 *(two-thirds of each House concurring therein), That the fol-*
4 *lowing article is proposed as an amendment to the Constitu-*
5 *tion, which shall be valid to all intents and purposes as part*
6 *of the Constitution when ratified by the legislatures of three-*
7 *fourths of the several States within seven years after the date*
8 *of its submission to the States for ratification:*

1 "ARTICLE —

2 "The President may disapprove any item of appropri-
3 ation in any Act or joint resolution, except any item of appro-
4 priation for the legislative branch or the judicial branch of the
5 Government. If an Act or joint resolution is approved by the
6 President, any item of appropriation contained therein which
7 is not disapproved shall become law. The President shall
8 return with his objections any item of appropriation disap-
9 proved to the House in which the Act or joint resolution
10 containing such item originated. The Congress may, in the
11 manner prescribed under section 7 of article I for Acts disap-
12 proved by the President, reconsider any item of appropriation
13 disapproved under this article."

○

98TH CONGRESS
1ST SESSION

S. 1921

To allow the President to veto items of appropriation.

IN THE SENATE OF THE UNITED STATES

OCTOBER 5 (legislative day, OCTOBER 3), 1983

Mr. MATTINGLY (for himself, Mr. DOLE, Mr. GOLDWATER, Mr. NICKLES, Mr. SYMMS, Mr. DENTON, Mr. TRIBLE, Mr. GARN, Mr. HATCH, Mr. LAXALT, Mr. KASTEN, Mr. MURKOWSKI, Mr. WILSON, Mr. HUMPHREY, Mr. QUAYLE, Mr. HELMS, Mr. ARMSTRONG, Mr. THURMOND, and Mr. WARNER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To allow the President to veto items of appropriation.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That (a) the President may disapprove any item of appropri-
- 4 ation in any Act or joint resolution, except any item of appro-
- 5 priation for the legislative branch or the judicial branch of the
- 6 Government.
- 7 (b)(1) If an Act or joint resolution is approved by the
- 8 President, any item of appropriation contained therein which
- 9 is not disapproved shall become law.

1 (2) The President shall return, with his objections, any
2 item of appropriation disapproved to the House in which the
3 Act or joint resolution containing such item originated.

4 (c) The Congress may reconsider any item of appropri-
5 ation disapproved under this section in the same manner as is
6 prescribed under section 7 of article I of the Constitution of
7 the United States for reconsideration by the Congress of Acts
8 disapproved by the President.

○

Senator HATCH. The first witness this morning is one of the true congressional leaders for a line-item veto, Senator Dixon. Senator Dixon is the author of Senate Joint Resolution 26, one of the foremost current proposals for a constitutional amendment to grant the President a line-item veto.

Senator Dixon, we are delighted to have you here with us this morning. We look forward to taking your testimony, and we appreciate the leadership that you have given in so many ways here in the U.S. Senate, and particularly on this issue, so we will turn the time over to you.

**STATEMENT OF HON. ALAN J. DIXON, A U.S. SENATOR FROM THE
STATE OF ILLINOIS**

Senator DIXON. Thank you very much, Mr. Chairman.

I appreciate the opportunity to testify here today on my proposed constitutional amendment authorizing the President to disapprove or reduce individual terms of appropriations, subject to a majority vote override.

Let me first say that I decided to introduce Senate Joint Resolution 26 with the greatest reluctance. I believe constitutional solutions to problems should be considered only as a last resort, in situations where the problem is extremely serious, of great magnitude, of a continuing nature, and where a statutory solution is impossible.

Our budget problems clearly meet this definition. Deficits have risen from under \$5 billion in 1963 to over \$195 billion in fiscal 1983. The estimate for fiscal 1984 is almost as bad—\$190 billion—and the deficits over the next few years alone could exceed \$1 trillion. The budget has been balanced only once in the past 20 years. And as the deficit projections show, the problem is not getting better; it is getting worse.

Past Congresses and Presidents have condemned these increasing deficits, and Congress has taken a number of steps to try to improve its ability to deal with the budget crisis. The most important of these was probably the passage of the Budget Act. That act forced Congress to consider the budget as a whole and created procedural mechanisms to help the Congress to address budget problems.

The Budget Act was an important and useful step, but as the evidence of what can only be called terrifying budget deficits shows, the Budget Act has been totally inadequate to deal with the budget crises we are currently facing.

Solving our budget problems on a long-term basis will require strong action in a number of areas. I am convinced that adding an item-veto constitutional amendment to our Constitution is probably the singlemost important action we could take if we really want to end the deficit nightmare.

As you have pointed out, Mr. Chairman, the item veto is not a new idea. It first appeared in the Confederate Constitution. The Confederacy did not catch on, but the item veto did, and now 43 of the 50 States have item veto provisions in their constitutions. The States give their Governors this authority because it is needed, because it works, and because it strengthens their budget processes.

While the idea has demonstrated its merit at the State level, however, it has never seriously been considered at the Federal level. Over 140 item veto proposals have been introduced since the first one, as you pointed out, in 1876. At least seven different Presidents have requested item-veto authority, but none of these proposals or requests has ever been sent to the States, or been acted on by either the House or the Senate.

It is long past time to change that situation, and act on an item-veto provision that helps restore the President's veto power. I say restore, because the truth is that the Presidential veto is now a much weaker weapon than it originally was.

Under our Constitution, a President can only veto an entire bill. He or she cannot veto individual items of spending within the bill—the veto is an all or nothing proposition. When our Constitution was written, that was a reasonable and workable balance of powers between the legislative and executive branches. Government was much smaller and simple. Over the past 194 plus years, though, Congress has tipped the balance in its favor and substantially eroded the President's veto power. The growth in Government, together with the increasing use of omnibus legislation, now make it significantly more difficult for a President to play the role envisioned by our Nation's Founders.

Increasingly, a President has the choice of either shutting down the Government, or signing into law billions of dollars in spending which he or she does not support. The history of an urgent supplemental appropriations bill from the last Congress illustrates the point. President Reagan vetoed that bill twice. At least five different versions of the measure were pending before our Senate at various times. While Congress and the President fought over the housing stimulus package and other issues in controversy, many programs not in dispute were either brought to a standstill, or nearly so. Major parts of the Government once again went to the brink. Social Security checks were nearly not mailed, thousands of Government employees were unnecessarily laid off, and many worthy and necessary Government activities were curtailed.

Unfortunately, the urgent supplemental was not an isolated case. Congress often attaches controversial items to "must" bills in an effort to make it more difficult for a President to use his veto power. Logrolling, and packaging good and bad projects and programs into a single omnibus bill, has become a way of life.

I know these practices are near and dear to the hearts of many legislators, but they work to undermine our ability to budget in a fiscally sound and responsible manner. They are clearly wasteful, extravagant, and ultimately, destructive.

Congress will never resolve the deficit problems if it continues this business as usual approach. Congress must surrender some of the prerogatives it has accumulated over the years, and allow at least a partial restoration of the President's veto power.

Many members, as well as those who benefit from the current way of doing things, may not want to surrender all the power they have gained. To ensure that the proper balance of powers between the legislative and executive branches of Government is maintained—to ensure no possibility of the creation of an imperial Presidency takes place, I am proposing only a partial restoration, giving

the President item-veto authority, but allowing Congress to override it by a simple constitutional majority.

Under my proposal, a President would have to choose: either veto an entire bill, forcing Congress to attempt to override by two-thirds vote, or use the item veto, recognizing that it would be easier for Congress to override.

Stated another way; it simply allows the President to put the Congress on record, to see whether there is in fact majority support for certain individual items of spending in an omnibus bill. As we all know too well, most members of Congress have never seen, and do not know about many of the literally thousands of individual items in the hundreds of pages of appropriations bills enacted every year. We rely on staff, and the knowledge, character, and ability of the Senators or Representatives that are the subcommittee chairmen and ranking members that handle the bills. Yet all these items are presumed to have majority support, because they passed in the Congress.

If the President opposes an item, why should he or she not have the right to ask the Congress to go on record, and to determine whether the majority that is presumed to exist actually exists?

In the early days of our Republic, Presidents often effectively had that right because bills were narrower and did not deal with more than one subject. But now we run a \$926 billion Government with perhaps 13 annual appropriations bills, and in recent years, we have not even managed to pass that many. More often, major parts of the Government are run by continuing resolution, as you know.

Majority override means that a President could not overturn strong congressional support for a single item through use of the item veto, and the support of one-third plus one in either the House or the Senate. Only the veto of an entire bill would take a two-thirds vote to override. An item veto would be sustained if a President commanded majority support, and would be overturned if the item had majority support.

Some backers of structural changes in our spending process believe a constitutional amendment is too difficult and time consuming. They advocate a statutory approach or providing the President with rescission authority. Many of my colleagues in the Senate support one of these alternate approaches. I have enormous respect for them and understand their desire to get a quick solution to our fiscal crisis. I am not able to support a statutory approach, however, for a number of reasons.

I believe a statute raises considerable constitutional questions. I am very concerned that a statute would unconstitutionally breach the separation of powers, and put the President in the heart of the lawmaking process. I do not believe it is constitutionally sound for a President who has signed a law—and thereby indicated his or her approval—to then unilaterally rescind some part of the spending in that law. Some rescission proposals, however, would permit just that. A President could rescind spending and force Congress to try to pass a joint resolution to put spending back into law that was already in law. Our Constitution requires both the approval of Congress and the President to make law. It does not permit the President to make law on his own.

Other proposals hinge on redefining what a bill is, attempting to say that Congress can effectively pass bills in bulk, as it were, which would then be divided into discrete parts for purposes of Presidential veto. I find this notion interesting but ultimately unpersuasive. I do not see where the Constitution says that the Congress can call sections of a bill a bill, or that Congress and the President, acting together, can define a bill as something other than what now and always has constituted a bill.

The item veto constitutional amendment, on the other hand, builds on the role the Constitution has already assigned the President in the legislative process. It permits a President to indicate his or her approval of individual items of spending before they become law, not after. It gives the President only one bite at the apple, not two. A President could not sign a bill, and then rescind some of the spending; he or she could not veto a bill and then, if the veto is overridden, rescind individual items of spending from the bill.

Some opponents of the item veto argue that it would only affect a very small part of the total \$926 billion Federal budget, perhaps as little as 9 percent. They point to the fact that the item veto could not be used to reduce interest payments on the national debt, and that it would not apply to what are called entitlement programs, such as Social Security.

There are a lot of responses to that argument, Mr. Chairman. Let me briefly say that I agree that the item veto cannot reduce the budget line for interest expenses. However, it will put more discipline into the budgetmaking process, and therefore, will create an atmosphere that will help hold down spending in every area, even in areas like entitlements, where it does not technically apply.

Additionally, with respect to Social Security and other entitlement programs, it should be remembered that many of them are already subject to a kind of balanced budget requirement—that is, they are supported by special, dedicated taxes, and their spending levels are at least somewhat controlled by the amounts these taxes bring in.

Further, it is worth noting that national defense, the single largest program in the budget, \$313 billion, Mr. Chairman, would be fully subject to an item veto.

Last and most fundamentally, it is not reasonable or fair to argue that the item veto would not work because it would not be fully effective the first year—because of carryover spending and other reasons—and based on assumptions as to how one President might use it. We are talking about a constitutional amendment that would be a permanent part of our Constitution and might take some time to become fully effective, and not a provision that would be in use only during fiscal year 1985.

I realize that the item veto is a controversial idea, even though there is substantial experience with the concept at the State level. I therefore would like to emphasize once again my deep gratitude to you, chairman of the Constitution Subcommittee, and Senator Thurmond, chairman of the Judiciary Committee, for scheduling this hearing.

The item veto should get the closest possible examination. I am confident that this kind of review will provide ample justification

for action on the amendment by the House and the Senate and submission to the States for ratification.

In conclusion, as I stated before, the item veto is not a cure-all by itself for the budget problems we are facing. Dealing with the deficit will require action in every area of the budget, and hard and distasteful action on the revenue side of the budget. However, it can and will make a real difference. If it works as well at the Federal level as it does in my own State of Illinois, it could save \$27 billion a year, or more.

Before I conclude, let me express the regret of the Governor of my State, Jim Thompson, that he could not be here today. As you know, he had originally intended to testify. Unfortunately, however, problems in Illinois that arose after the hearing date was set made his appearance impossible. The Governor may submit a written statement, however, which I hope can be made a part of the hearing record.

[Statement referred to appears at p. 182 in the appendix.]

I thank you, Mr. Chairman, very much for the opportunity to be here and to testify, and may I simply say this, that when the President, in his State of the Union Message asked for the line item and reduction veto power, as you know, I had previously, on several occasions, introduced a constitutional amendment granting him that power. I went back to my State and held a press conference in support of the President's request, and I had with me, Mr. Chairman, all of the appropriation bills this Congress passed last year.

Mr. Chairman, the appropriation bill stack was that high [indicating], and I asked the people of my State, does it make any sense to say to the President of the United States of America, the most powerful man in the world, that he has two choices: take it all, or reject it? He cannot go to page 36, and down to line 16, and veto \$62,423,312.16, or something of that character, he has no power whatsoever in that regard. I think that that is a very irresponsible allocation of fiscal responsibility in the President of the United States, and I thank you for giving me the opportunity to appear before the committee.

Senator HATCH. Well, thank you, Senator Dixon.

I am very concerned about this issue. I think there are two sides to it, and you have eloquently expressed your feelings about it.

I have a number of questions that I am going to submit to you, but I would just ask one, because we have some other members of Congress who would like to testify.

Your proposal, Senate Joint Resolution 26, is different from the other line-item veto proposals, in that it allows the President's veto to be overridden by a simple majority of either House of Congress.

Now, I would just like to ask you, why did you choose the simple majority for an override, instead of, say, the two-thirds requirement, or even the 60 percent requirement that we sometimes recognize in the Senate on other issues?

Senator DIXON. Well, for the very simple reason, Mr. Chairman, that the major objection to the idea of a line item, or reduction veto power, is that you are going to create an imperial Presidency, and unreasonably tilt the power of this Government in the favor of the executive, at the expense of the legislative.

I would argue that that is not the case with Senate Joint Resolution 26. Here we present to the President, on each and every occasions, this kind of a dilemma. Does he want to veto the whole thing, thus ensuring the requirement that the Congress must have a two-thirds majority in each House to override, or does he want to be selective in veto by line item, or reduction veto, certain amounts, thus giving the Congress the power by a constitutional majority of 51 in the Senate and 218 in the House to work its will, if it can control a majority in both places.

I think that is a reasonable distribution of the powers, and particularly since my good friend and respected member of our body, Senator Mark Hatfield, the chairman of the Appropriations Committee, will be here arguing against this amendment, I would want to respond to the argument I anticipate from him in advance, and say that I believe that Senate Joint Resolution 26, my amendment, does keep the Congress in the game. It does provide for a degree of selectivity, both in the Chief Executive and in the Congress, and I would argue, Mr. Chairman, that in those cases where there is a national will, in those cases where there is a national support for the position of the Congress, the Congress will prevail.

I will give you an example. This week, or last week, I should say, in the urgent supplemental appropriation bill that was before us, House Joint Resolution 423, I think it was, I am not sure that I am correct on the number, at the last moment I was able to put into that bill \$100 million for summer employment programs in the major city of our Nation, which suffered a fairly substantial cut last year, as an example, the city of Chicago in my great State, suffered a 47-percent reduction.

This appropriation would permit the hiring of an additional 16,000 kids this summer, during the hot days of the summer, in the city of Chicago.

Now, I would argue that if the President—and incidentally that affects major cities all over the United States, the city of New York, Al D'Amato and Pat Moynihan were supporters; Philadelphia and Pittsburgh, and Senators Specter and Heinz, as you know, members of your party, were supporters of my amendment.

I would argue that if the President, on a selective basis, attempted to take out that 100 million, that there would be a substantially good bite in both places to restore those sums on a majority override. We might not win, but I would argue that there is a national audience supportive of the idea, as distinguished from the little log-rolling that always takes place, where each of us is trying to address certain local needs, oftentimes I think at the expense of the national purse.

So I would argue that my amendment gives the President these responsible opportunities on a selective basis, while still keeping the Congress in the game, when there are important overriding national interests involved.

I think—when I used that figure, 24 billion, Mr. Chairman, I do not use that loosely. That is predicated upon the experience in my State, where my State is reported to the Congress, to the effective people in Congress, that we see 3 percent last year on the line item in reduction veto in Illinois, and translated to the national experience, that is about \$24, \$25 billion.

When somebody comes in here and says this does not affect entitlements, so why bother with it, you know, I am persuaded that \$25 billion ain't chickenfeed, Mr. Chairman, and that if this only did that much each year for the future, it is a significant fiscal tool that the President ought to have.

Senator HATCH. Well, thank you. I appreciate having your testimony, and we appreciate having you here today.

Senator DIXON. I thank you, Mr. Chairman. I am submitting for the record an article from the Washington Post.

[The following was received for the record:]

[From the Washington Post, Oct. 19, 1983]

RESTORING VETO POWER

(By Alan J. Dixon ¹)

As the sponsor of one of the item-veto proposals now pending in Congress, I'm pleased that The Post decided to pay editorial attention to the idea. I just wish I could be as pleased with the result of that attention.

In an editorial entitled, "No Veto Power," [Oct. 12] the Post argues that: 1) an item veto would tilt the balance of power between the branches strongly toward the president and away from Congress; and 2) the item veto simply wouldn't lead to a balanced budget. Actually, The Post phrased these arguments somewhat less delicately than I have. In the editorial's words, "By threatening to veto well-chosen items here and there in the budget, the president could terrorize Congress into going along on more important matters. . . . And even if a president could and would veto all the special add-ons for public works and minor social programs, the savings wouldn't pay for the added interest cost on last year's deficit."

There is another side to the argument.

I did not introduce a proposed constitutional amendment because I want to enhance a Republican president's power at the expense of Congress. I'm a Democrat, and while I'm fairly new to the Senate, I've spent most of more than 30 years in politics in the legislative branch of government. What my legislation—S.J. Res. 26—seeks is to restore to the institution of the presidency at least part of what was once there—an effective and real veto power.

I say restore because the truth is that Congress has managed over the past 194-plus years to erode substantially the president's veto power. When our Constitution was written, bills generally covered only a single subject. Running the entire government via a single continuing resolution was not the ordinary practice back then. By the time of the Civil War, however, omnibus legislation had become common enough and a large enough problem that an item veto was included in the constitution of the Confederacy. The Confederacy didn't catch on, but the item veto did. Forty-three states now include item veto provisions in their constitutions.

I recognize that many in Congress, as well as those who benefit from the current way of doing things, might not want to surrender all the power they have gained over the years. What I am proposing is only a partial restoration, giving the president an item veto but allowing Congress to override it by a simple constitutional majority. A president would have to choose: either veto an entire bill, forcing Congress to attempt to override by a two-thirds vote, or use the item veto, recognizing that it would be easier for Congress to override.

Proposals offered by some of my House and Senate colleagues do not include the lower override feature. All item-veto supporters, however, want to make it part of the law of the land because it is needed, because the state experience proves it works, and because it strengthens the budget process.

An item veto would allow a president to focus the attention of Congress and the country on those particular items of spending that he or she believes are wasteful, inappropriate or unwise. The current veto, on the other hand, is a blunt, unfocused weapon. A president may face the choice of having to shut the government down completely to get at the one or two items in a bill that are truly in controversy.

The history of an urgent supplemental appropriations bill from the last Congress illustrates the point. President Reagan vetoed that bill twice. At least five different versions of the measure were pending before the Senate at various times. While

¹ The writer is a Democratic Senator from Illinois.

Congress and the president fought over the housing stimulus package and other issues in controversy, many programs not in dispute were either brought to a standstill or nearly so. Major parts of the government once again went to the brink. Social Security checks were nearly not mailed, thousands of government employees were unnecessarily laid off, and many worthy and necessary government activities were curtailed.

An item veto would make that kind of legislative torture unnecessary and would free the innocent hostages—those programs not in controversy. It would result in a more efficient, more disciplined and more accountable spending process, and would therefore help substantially in our efforts to get the federal budget back under control.

I do not content that an item veto would, by itself, lead to a balanced budget. Efforts will need to be made in every spending area and on the revenue side of the budget to do that. I do contend that the item veto could make a real dent in what now seems to be \$200 billion deficits without end.

Senator HATCH. We would now like to call on the distinguished chairman of the Senate Appropriations Committee, Senator Hatfield.

We are delighted to have you before our committee here this morning, and we welcome you to the subcommittee, Senator Hatfield. We look forward to taking your testimony, not only as chairman of the Appropriations Committee, but as an acknowledged expert on constitutional matters, in your own right.

STATEMENT OF HON. MARK O. HATFIELD, A U.S. SENATOR FROM THE STATE OF OREGON

Senator HATFIELD. Thank you, Mr. Chairman.

Mr. Chairman, I am very appreciative of your holding a hearing on this subject, because it is of great interest, and there has been a great deal of debate about it, both within and outside the Congress.

One of our colleagues once stated that the line-item veto is "more power than a good man would want, and more than a bad man should have."

Now, this may be a bit of a hyperbole, but it is also, I think, the crux of the issue. There can be no dispute that the line-item veto represents a significant grant of power to the President, as the Chief Executive, at the expense of the legislative branch of Government.

Equally true, but perhaps more arguable, is that there is no sound reason for this shift of power, and I do not believe that it should be made under any circumstance.

First, it should be made clear in any discussion of the line-item veto that it is not a mechanism to achieve meaningful reductions in the Federal deficit. Proponents of this scheme play on a misperception of the composition of the Federal budget. The line-item veto cannot be applied against some of the largest and fastest growing parts of the budget, such as permanently funded entitlement spending, which is \$300 billion, and other mandatory costs, such as interest on the Federal deficit, which is \$140 billion. These are figures for fiscal year 1985. Nor can this veto be used to reduce entitlements funded in annual appropriations, which is another \$100 billion. These items that I have enumerated constitute about 55 percent of the total budget.

Now, of the remaining 45 percent, two-thirds is defense spending. What is left, with less than 15 percent of the budget, is nondefense discretionary programs. This small fraction of the budget has

always borne the brunt of spending reductions, and it has borne that brunt in the last 3 years.

Let me just illustrate. In those areas we have seen an increase in the last 3 years of 1 percent growth. Contrary, or corollary to that, in the military we have seen an 82 percent growth in the military spending in the last 3 years.

I think it is very obvious that this is not really an area for further significant savings, or a target for the line-item veto. These nondefense discretionary programs include education assistance, community and regional development, law enforcement, environmental protection, health and safety research, securities and economic regulation, energy development and a host of other vital Federal responsibilities.

Mr. Chairman, they could all be abolished, totally eliminated, and you would still have a deficit approaching \$100 billion.

Furthermore, since there has been virtually no growth in this portion of the budget, as I indicated, reductions here will not curb the spiralling cost increases projected for Federal programs in the future years.

As a means to balance the budget, the line-item veto is all but meaningless, but this is not to say that it has no significance at all. In fact, it will make a substantial shift in the balance of power between the executive and the legislative branches of Government.

Currently, the President can and does effectively use his veto power to enforce his aggregate budgetary plan on congressional spending bills. The line-item veto, however, will empower the President to go beyond the simple control on overall spending, and allow him to virtually dictate spending priorities over individual programs and activities. With this power the President can frustrate a decision of the Congress on any individual program, be it for political or ideological reasons, or simply because of personal bias.

At this point, I would like to suggest, Mr. Chairman, we ought to look at this in the context of history, and not in the context of the present administration. I am sure the Senate at this time, with a Republican majority, and the White House, under the control of a Republican President, would have a little more friendly attitude toward empowering the President with this authority. But let us bear in mind, at least in my memory, and my memory goes back to the advent of the New Deal, and Mr. Roosevelt, and through the New Deal period where the President exercised arrogance of power, of wanting to pack the Supreme Court, and dictate the programs of the Congress, have purges against Senators who did not go along with him, such as Senator George of Georgia, and Senator Tydings of Maryland, and others, the Governor of Oregon, Governor Martin.

I think we have to remember the kind of power the Presidents have exercised, and how they have tried to overcome even those checks and balances that have been built in tradition, and as well in the Constitution.

I think the most significant thing in this is that this is more than a question of who prevails, on whether any particular activity is funded. The line-item veto has wide ranging ramifications on the gamut of decisions made by the Congress.

We have all witnessed the power of the President when he lobbies Congress by telephone. It does not take much imagination to consider how much more persuasive he could be if his words were buttressed with a veto stamp over individual projects and activities within our States or our districts.

I always recall an incident that my friend, who just passed away this weekend, Senator Frank Church of Idaho, once spoke of. During the Vietnam war period, when he and I were debating the validity of the intelligence, or the lack of intelligence for our involvement in Vietnam, and he had quoted Walter Lippmann at some length on various and sundry statements that he made against President Johnson's Vietnam policy.

Subsequent to that he was at the White House, in which he thought he would just again remind the President of a certain project he had in Idaho, that he wanted the President's support for, and when he mentioned that, the response from President Johnson was, "Why do you not go and ask Walter Lippmann for it?"

I think that that illustrates how Presidents can, and probably would exercise certain persuasive tactics, through various and sundry projects within States, if they were empowered with a line-item veto.

Much has been made of the fact that 43 States currently grant their Governors some form of line-item veto authority. The argument here is that what works for States ought to work for the Federal Government.

Now, without getting into the question of how well this authority works in the States, and I think that ought to be a subject of analysis, this rationale ignores the major differences between the Federal and State responsibilities.

As a former Governor, for 8 years, of my State, and which had a line-item veto authority for a Governor, I can speak with some authority on that. I think the most obvious difference is simply the size and the scope of power of the Federal Government. The greater the power, the more critical it is that such power be held in check, balanced between the three, coequal branches of Government.

There is no way that you can compare any State, or the aggregate powers of the State, with the Federal Government, as of 1984.

Furthermore, unlike States, the Federal Government bears the responsibility for national defense, foreign policy, and broad-based social welfare entitlement activities like Social Security, which the States do not. These costs drastically alter the structure of the Federal budget from that of the States' budget, so that a line-item veto in the hands of a Governor could be used as an effective tool to make large budget reductions, such as application at the Federal level, as is impossible.

Little data is available on the actual effect that the line-item veto has had in State budgeting. But what we do know is instructive. President Reagan, for example, reduced the State budget of California by an average of less than 2 percent per year when he was Governor. If this rate of reduction were applied against the amount—and by the way, he campaigned for the Governorship of California against the big spenders who had preceded him in the office, and how he was going to reduce the State government's

budget in California, and he did, but the rate was 2 percent per year.

If this rate of reduction were applied against the amount in the Federal budget for all nondefense discretionary programs, the projected Federal deficit would be reduced by only 1 percent.

We also know that the legislatures in States which have the line-item veto routinely "pad" their budgets, and that was my experience, with projects which they expect, or even want their Governors to veto. It is a wonderful way for a Democrat-controlled legislature, that I had, to put a Republican Governor on the spot: Let him be the one to line-item these issues that were either politically popular, or very emotional. This is certainly not a practice which we would like to see in Congress, but if we abdicate our budget responsibilities to the President, should he not also take the blame, as well?

Ten years has elapsed, Mr. Chairman, since the Congressional Budget Act was enacted. That measure's principal goal was to make Congress more effective in its discharge of its constitutional role to control the purse strings of the Treasury. It is indeed ironic that 10 years later, when confronting the largest and most challenging budgetary problems ever, we find proponents of a scheme to diminish the responsibility of the Congress over the budget. It is a self indictment. They would have us pass open-ended shopping lists of spending items, to be culled through and selectively implemented by the President.

Mr. Chairman, I am not arguing that the budget process we now employ in Congress is the best or the most effective in terms of assuring responsible spending decisions. Our difficulty in grappling with the current deficit is evidence enough of its shortcomings. But I am equally certain that the answer to our problems is not to delegate further responsibility to the Chief Executive.

Our representative democracy should not and cannot risk such a concentration of power in one man. The prolonged and tortuous debate over the Federal budget reflects the enormous significance this issue has for our Nation. Let us get on with that debate, and put aside these notions of finding simple solutions to our budget problems.

Thank you.

Senator HATCH. Thank you, Senator Hatfield. That was an eloquent statement on your position with regard to line-item vetoes.

Since you are chairman of the Senate Appropriations Committee, I would like to just pose one question within your own special expertise.

You pointed out that entitlements are now over half of the Federal spending programs, and that they would not be subject to an item veto.

Would an item veto, in your opinion—and I think you indicated this in your remarks—increase the chance that Congress would convert more spending into entitlements to avoid an item veto, and thus lessen the control, the real control over spending?

Senator HATFIELD. Mr. Chairman, I think a line-item veto invites all kinds of mischief, and I say mischief because I believe that things of that kind would happen as a way to try to restore or retain certain authority over programs. As you point out, it would

frustrate and inhibit the accountability of the budget process that we have set up under the Budget Act. If anything, I think we already have too many entitlements.

I would like to see us move in the other direction, and reduce the size and number of entitlements. The line-item veto would reverse that possibility, and move us toward enlarging programs, or as you say, incorporating programs into entitlements. It would be wrong, I think, to invite that kind of mischief.

I think it would also invite, again putting the President on the spot. As I indicated earlier, I think there are all kinds of ways that Congress could void the responsibility that now is ours, and I think that line-item veto does invite a diminution of responsibility and accountability.

Senator HATCH. In your mind, would the line-item veto actually constitute a legislative power in the President?

Senator HATFIELD. That is right.

Senator HATCH. So that is one of the things that you are having troubles with?

Senator HATFIELD. As we know in the mixture of powers today, the President does have limited legislative authority, or legislative powers in the presentation of a budget, and in his power to veto, or to sign a budget. Those are all legislative in character.

I think the President has given ample opportunities in those existing powers, legislative powers, to present and to advocate his position on legislative matters.

I do not see the necessity of expanding those powers to give him the line-item veto, and that is expanding the President's legislative powers, by giving him that kind of a veto.

Senator HATCH. If the Congress of the United States decides to give the President a line-item veto authority do you believe that the Congress can do that statutorily, or would it have to come by way of constitutional amendment?

Senator HATFIELD. Mr. Chairman, I would defer to you as a lawyer. I am not a lawyer.

I would like neither. If I had the choice, it would be like being given the choice between hanging or the gas chamber. I would not choose either.

But I would say that that would be a legal question for this committee. I would defer to the authority and the expertise of this committee.

Senator HATCH. Well, thank you, Senator. We may have some other questions in writing. We will keep the record open, but we appreciate your coming.

Senator HATFIELD. I thank the chairman for having the hearing.

Senator HATCH. Thank you. We appreciate your being here.

[The following was received for the record:]

[From the Washington Post, Oct. 20, 1983]

FOR THE RECORD

From remarks in the Senate by Mark Hatfield (R-Oreg.):

The proposed line-item veto cannot reach the enormous sums provided for entitlement programs because, if those funds are not provided, eligible recipients can sue the government for their payments. Neither does there seem to be any inclination on the part of the administration to pare back on congressional appropriations for

the Department of Defense or for foreign assistance, especially military aid. We therefore are left with that small percentage of the Federal budget, domestic, non-defense discretionary programs, against which the administration has pledged to take its "tough steps necessary to cut spending." But this spending * * * has precious little to do with the \$200 billion deficit. It amounts to \$75 billion or only about 9 percent of the Federal budget. The president could veto each line-item in every appropriation bill and still end up with a deficit of well over \$100 billion. * * *

[Under this proposal] even if the aggregate total of a bill was acceptable to the administration, the president could still use a veto to cut or eliminate appropriations for specific accounts. This is not budgetary restraint, this is actually the old impoundment strategy in different clothing. The president would not be vetoing spending because it was excessive; he would use his veto to kill programs for political or policy reasons.

The real issue here is not money; it is a question of power. Congress is responsible for writing spending legislation, and the president is empowered to veto bills he finds objectionable. * * * Were the president to be granted line-item veto power, he would on a line-by-line basis be able to "edit" legislation passed by Congress, and thereby usurp the authority currently held by the legislative branch.

Senator HATCH. We would like to call our last two congressional witnesses, we have Senator Mack Mattingly, a U.S. Senator from the State of Georgia; and we would also like to call the Honorable Mickey Edwards, U.S. Representative from the State of Oklahoma.

If we could have both of you come up. Let us start with you, Congressman Edwards.

We welcome you before the committee. We are happy to have you here, and we really look forward to hearing what you have to say.

**STATEMENT OF HON. MICKEY EDWARDS, A U.S.
REPRESENTATIVE FROM THE STATE OF OKLAHOMA**

Mr. EDWARDS. Thank you.

Mr. Chairman, I appreciate your having this hearing. I think it was something that was certainly needed to be done. I think it is quite obvious that there has been a lot of discussion of this issue. Without getting into all of the ramifications that might flow from the passage of a line-item veto, I appreciate the fact that you are looking into it a little more in depth than has been the case with some of the articles and statements that have been made publicly by other people.

What the line-item veto proposes is to transfer to the President the power to veto single items in appropriations bills passed by the Congress. That is a power that no previous President has ever had, and it is a power which, in my opinion, no President should ever have. There are sound reasons for the separation and balancing of national authority.

The Articles of Confederation, which were drafted when the Founders were only recently removed from the European experience, concentrated most of the national power in the hands of the legislative branch, that being the branch of government in which power was least concentrated, and the holders of that power most responsive to a constituent body.

It later became obvious that the requirements of leadership mandated something more than a figurehead President, and the Constitution which replaced the Articles conceded a bit more latitude to the President, but still, very strongly circumscribed that authority. The power to declare war was given, not to the President, but to

the Congress. The power to tax was given to the Congress, the power to spend was given to the Congress.

Monarchies, no matter how named, were to be feared, and the men who gathered in Philadelphia in 1787 were determined not to create such a centralization of power. For those conservatives who argue that it is necessary to give Ronald Reagan the tools that he needs to implement his programs, there is an interesting lesson to be learned from the debates and discussions which preceded the approval of the Constitution.

As Prof. Arthur Schlesinger points out in his book, *The Imperial Presidency*, those who resisted the new powers assigned to the Presidency, were persuaded finally to sign off on the idea by the likelihood that the Presidency would fall to George Washington, who of course could be trusted not to abuse power. Like today's conservatives, who take comfort in the knowledge that in their opinion Ronald Reagan is likely to be reelected, there is a failure to take into account that somewhere down the line the mantle is going to fall to people of different views.

The powers that are surrendered to one President remain to be used by others. Give to this President the power to strike from appropriation bills the domestic programs he thinks we can do without, and another President will use the same power to strike from defense appropriations those weapons systems he thinks we can do without.

The line-item veto is a two-edged sword, and whoever would acquiesce to giving this President such new powers, had better be prepared to see those powers used in a less agreeable manner in years to come.

An attempt has been made, and here I really want to associate myself with the remarks of Senator Hatfield, to justify this proposed surrender of congressional prerogatives by comparing the line-item veto at a national level with that exercised by the Governors of a number of States. That is very much like saying that what is appropriate for Senegal and Chad is appropriate for the United States as well.

The differences in size are awesome, but the differences in scope are such as to make comparison absurd. Governors do not deal with foreign policy, or national defense, and the security of the Nation, and the safety of its people are not put to risk by the concentration of new powers in the hands of the chief executives of Nevada or New Hampshire, or even California and New York.

The Federal Government is more than just a State government grown larger. Its powers are enormously more immense, and because there is no superseding authority, the concentration of powers in the hands of a single individual and his subordinates at the head of a national government is a matter of grave consequence.

In response to the President's call for these new powers, Mr. Chairman, the power which is to be stripped away from the Congress, which currently has sole authority to determine spending levels and priorities, a number of people have embraced the line-item veto as a potential panacea for spending, which has unarguably gotten out of control.

But there are other ways to reduce Federal spending, and there is simply no rational justification for a person who calls himself a political conservative to embrace the kind of centralization of power that is called for in the concept of a line-item veto.

The men who created the system of checks and balances understood full well the need for an energetic Chief Executive, but they also understood well the dangers that could flow from giving that Chief Executive too much power, or extending his reach into every aspect of the national life. It was with great deliberation that the Founders devised the means to limit Presidential power, both with respect to the ability to declare war, and to the ability to determine spending priorities. They knew very well that those who seek a strong leader usually gets one stronger than they had bargained for.

Either we separate the national powers, and leave in the hands of Congress those powers intended by the Constitution to remain there, or we eliminate the system of checks and balances inherent in the separation of powers.

Mr. Chairman, I have also submitted to you some materials, a copy of an article that I had in the Washington Post, and some other material that was prepared for a statement in the House of Representatives, which I hope will be included in the record.

Senator HATCH. We will place those in the record at this point.
[The following was received for the record:]

PREPARED STATEMENT OF HON. MICKEY EDWARDS

THANK YOU, MR. CHAIRMAN. I'M VERY PLEASED TO HAVE THE OPPORTUNITY TO ADDRESS YOUR COMMITTEE THIS MORNING AND TO SHARE WITH YOU SOME VERY DEEP CONCERNS ABOUT THE PROPOSALS TO GRANT LINE ITEM VETO AUTHORITY TO THE PRESIDENT. ALTHOUGH SOME HALF DOZEN DIFFERENT BILLS HAVE BEEN INTRODUCED IN THE CONGRESS TO GRANT THIS AUTHORITY THE BASIC CONCEPT IS SIMILAR -- LINE ITEM VETO WOULD PERMIT THE PRESIDENT TO DESIGNATE ANY PROVISIONS IN APPROPRIATIONS BILLS WITH WHICH HE DISAPPROVES AND TO RETURN THOSE PROVISIONS TO THE CONGRESS, WHILE PERMITTING THE REMAINDER OF THE LEGISLATION TO BECOME LAW. THE DESIGNATED ITEMS WOULD THEN BE CONSIDERED BY THE CONGRESS FOR POSSIBLE VETO OVERRIDE.

I AM FOCUSING MY TESTIMONY TODAY LARGELY UPON THE CONSTITUTIONAL IMPLICATIONS OF THE LINE ITEM VETO PROPOSAL. WHILE THERE IS AN IMPORTANT AND VALID CASE TO BE MADE AGAINST THE VETO STRICTLY ON THE BASIS OF POLITICAL CONSIDERATIONS, MY STATEMENT TODAY WILL CENTER AROUND WHAT I PERCEIVE TO BE UNACCEPTABLE CONSEQUENCES OF THIS LINE ITEM VETO WITH RESPECT TO THE CONSTITUTIONAL SEPARATION OF POWERS AMONG THE THREE BRANCHES OF THE FEDERAL GOVERNMENT AND WITH RESPECT TO THE ABILITY OF THE CONGRESS TO SHAPE POLICY VIA THE ENACTMENT OF APPROPRIATIONS LEGISLATION.

BY WAY OF BACKGROUND, I WILL ACKNOWLEDGE THAT THE CONCEPT OF LINE ITEM VETO IS NOT A NEW ONE. MOST GOVERNORS HAVE THIS AUTHORITY AND AS EARLY AS 1876, A CONSTITUTIONAL AMENDMENT GRANTING LINE ITEM VETO AUTHORITY TO THE PRESIDENT WAS PROPOSED. UNSURPRISINGLY, A NUMBER OF PRESIDENTS, INCLUDING FRANKLIN ROOSEVELT, HARRY TRUMAN AND DWIGHT EISENHOWER ALL, AT ONE TIME, ASKED CONGRESS FOR THE POWER TO VETO SPECIFIC ITEMS IN APPROPRIATIONS BILLS. I'M SURE THAT GIVEN THE CHOICE, EVERY CHIEF EXECUTIVE IN AMERICA, FROM THE PRESIDENT ON DOWN TO SMALL TOWN MAYORS, WOULD BE DELIGHTED BY THE PROSPECT OF SUCH A POWERFUL TOOL. BUT, WE IN THIS CONGRESS ARE NOT CHIEF EXECUTIVES. WE ARE THE PEOPLE'S BODY AND WE HAVE THE RESPONSIBILITY TO TAKE THE PREDOMINANT POSITION WITH RESPECT TO PUBLIC POLICY -- A RESPONSIBILITY I BELIEVE WE WOULD ABDICATE IF WE WERE TO APPROVE A CONSTITUTIONAL AMENDMENT PROVIDING FOR A LINE ITEM VETO.

AS YOU ARE AWARE, MR. CHAIRMAN, THE LINE ITEM VETO HAS BEEN PROMOTED AS A "TOOL OF FISCAL RESTRAINT" -- AN IRRESISTIBLE DEVICE CONSIDERED NECESSARY TO FORCE THIS CONGRESS TO COME TO GRIPS WITH ITS RECKLESS SPENDING. CASTING ASIDE THE OBVIOUS QUESTIONS INVOLVING THE LENGTH OF THE AMENDMENT APPROVAL PROCESS, I AM CONCERNED ABOUT THE PERCEPTION THAT FISCAL RESTRAINT AND FISCAL RESPONSIBILITY ARE FUNCTIONS OF DOLLARS AND CENTS ALONE. I CONSIDER MYSELF A FISCAL CONSERVATIVE. MY CONSTITUENTS, BY AND LARGE, ARE FISCAL CONSERVATIVES. BUT FISCAL CONSERVATISM IS AS MUCH A MATTER OF WHAT WE SPEND FOR AS IT IS A QUESTION OF HOW MUCH WE SPEND. THE "BORN AGAIN" BUDGET-BALANCERS ATTACKING PRESIDENT REAGAN FOR A DEFICIT THEY ARTFULLY DESIGNATE AS "HIS," ARE VERY READY AND WILLING TO MAKE MASSIVE CUTS IN THAT DEFICIT BY GUTTING OUR NATIONAL DEFENSES. OBVIOUSLY, CONSERVATIVES REJECT THAT APPROACH. I CONTEND, MR. CHAIRMAN, THAT SUPPORT OF THIS LINE ITEM VETO CONCEPT IGNORES THE VALUE OF THE APPROPRIATIONS PROCESS AS A TOOL OF SHAPING POLICY AS WELL AS SPENDING.

LET ME USE A SPECIFIC EXAMPLE -- THE APPROPRIATIONS BILLS PROVIDING FOR FOREIGN ASSISTANCE. I AM A MEMBER OF THE HOUSE FOREIGN OPERATIONS SUBCOMMITTEE AND PARTICIPATE IN THE PROCESS DURING WHICH THESE BILLS ARE FORMULATED. AS WITH ANY OTHER PIECE OF LEGISLATION, THE PROCESS INVOLVES COMPROMISE AND BALANCE. THE FACT THAT ONE COUNTRY MAY RECEIVE ONLY HUMANITARIAN AID, ANOTHER RECEIVES ONLY MILITARY AND SECURITY AID AND A THIRD RECEIVES BOTH KINDS OF AID IS A MATTER OF POLICY -- NOT JUST NUMBERS. FOR A PRESIDENT TO REMOVE ANY PORTION OF THAT BILL, SHIFTS THE POLICY OF THE UNITED STATES BECAUSE THE REMAINDER BECOMES LAW. AND, IN ORDER TO RETURN THAT BALANCE TO THAT APPROPRIATIONS BILL, CONGRESS WILL BE FORCED TO MUSTER A SUPERMAJORITY OF BOTH HOUSES -- A RARE ACCOMPLISHMENT.

TAKING THIS CONCERN A STEP FURTHER, WHAT HAPPENS TO THE MINORITY CONSIDERATIONS DURING THE FORMULATION OF APPROPRIATIONS BILLS? WHAT WILL HAPPEN TO THESE CONSIDERATIONS, WHEN THE MAJORITY COULD, WITH THE COOPERATION OF A PRESIDENT POSSESSING THE LINE ITEM VETO, SIMPLY RULE OUT ANY MINORITY PARTICIPATION, EXCEPT IN MATTERS IN WHICH THE MINORITY IS PERCEIVED TO ENJOY THE SUPPORT OF TWO-THIRDS

OF BOTH HOUSES? THE ISSUE IS MUCH LARGER AND MUCH MORE IMPORTANT THAN DISCUSSIONS OF PORK BARREL SPENDING. THE LINE ITEM VETO CUTS AT THE HEART OF THE CONGRESS' ABILITY TO SHAPE POLICY AND TO IMPLEMENT POLICY THROUGH THE APPROPRIATIONS PROCESS.

ONE OF THE GREATEST CONTRIBUTIONS OF THE U.S. CONSTITUTION TO THE PRINCIPLES OF DEMOCRACY IS THE FINELY ORCHESTRATED BALANCE OF POWERS AND RESPONSIBILITIES AMONG THE THREE BRANCHES OF GOVERNMENT. ALTHOUGH THESE POWERS HAVE CHANGED DURING THE LAST 200 YEARS, CONGRESS STILL RETAINS THE PREDOMINANT RESPONSIBILITY FOR SETTING FEDERAL POLICY. THE EXECUTIVE BRANCH IS THE "CHECK" ON THE ABUSE OR MISUSE OF THAT CONGRESSIONAL POWER. IT IS NOT THE INITIATING BRANCH, EXCEPT IN AREAS DELINEATED BY THE CONSTITUTION.

I'D ALSO LIKE TO BRIEFLY ADDRESS THE PROPONENT'S CONTENTION THAT THE LINE ITEM VETO IS USEFUL ON THE FEDERAL LEVEL AS EVIDENCED BY THE PROGRESS IN BUDGET-CUTTING MADE BY STATE GOVERNORS POSSESSING THE LINE ITEM VETO AUTHORITY. STATE GOVERNMENTS HAVE ENORMOUS RESPONSIBILITIES, OF COURSE. THEY ARE RESPONSIBLE FOR EDUCATION, FOR CRIMINAL JUSTICE, FOR STATE ROADS AND BRIDGES, FOR MANY WELFARE FUNCTIONS AND FOR MANY OTHER ACTIVITIES INVOLVING ECONOMIC DEVELOPMENT AND COMMERCE. BUT, THERE IS NOT ONE STATE FUNCTION THAT IS OBVIOUSLY PRE-EMINENT, THAT IS NOT THE CASE ON THE FEDERAL LEVEL. THE FEDERAL GOVERNMENT ALONE IS RESPONSIBLE FOR PROVIDING FOR OUR NATIONAL DEFENSE AND NATIONAL DEFENSE IS NOT JUST ANOTHER EQUAL PART OF THE FEDERAL PIE. IT IS OUR MOST IMPORTANT RESPONSIBILITY AS A CONGRESS AND SHOULD NOT BE SACRIFICED UNDER THE FALSE CLOAK OF FISCAL RESPONSIBILITY.

MY FINAL POINT ADDRESSES THE VALUE OF THE LINE ITEM VETO AS A TOOL OF FISCAL RESTRAINT. AS YOU MAY BE AWARE, ROUGHLY 75% OF FEDERAL OUTLAYS ARE CONSIDERED "RELATIVELY UNCONTROLLABLE" BY THE OFFICE OF MANAGEMENT AND BUDGET. THESE OUTLAYS INCLUDE INTEREST ON NATIONAL DEBT AND THE BILLIONS OF DOLLARS SPENT ANNUALLY THROUGH VARIOUS FEDERAL ENTITLEMENT PROGRAMS. THANKS TO THE MANNER IN WHICH CONGRESS HAS ARRANGED TO FUND MANY ENTITLEMENT PROGRAMS, THE MAJORITY OF OUTLAYS ARE NOT SUBJECT TO THE ANNUAL APPROPRIATIONS PROCESS AND ARE THEREFORE IMMUNE FROM THE LINE ITEM VETO. THAT LEAVES THE REMAINING FEDERAL EXPENDITURES, PERHAPS

AS LITTLE AS 30% OF TOTAL SPENDING AS SOLE TARGETS OF THE LINE ITEM VETO. IN A RECENT REPORT PREPARED BY THE HOUSE REPUBLICAN RESEARCH COMMITTEE, IT IS STATED THAT OVER THE LAST TEN YEARS, ONLY \$20 BILLION OF SAVINGS MIGHT HAVE BEEN ACHIEVED IF ONE PERCENT OF NON-ENTITLEMENT APPROPRIATIONS (INCLUDING NATIONAL DEFENSE) WERE ERASED USING THE LINE ITEM VETO. I CONTEND THAT A REALISTIC SAVINGS OF ROUGHLY \$2 BILLION PER YEAR IS A PALTRY SUM IN COMPARISON TO THE IMPACT OF THIS DRASTIC CHANGE IN THE CONSTITUTIONAL SEPARATION OF POWERS.

CONGRESS HAS THE TOOLS OF FISCAL RESTRAINT ALREADY, MR. CHAIRMAN. AND, THESE TOOLS DON'T IN ANY WAY DO VIOLENCE TO THE U.S. CONSTITUTION. THE PROBLEM IS, THE REAL PROBLEM IS, WE DON'T HAVE ENOUGH MEMBERS OF CONGRESS WHO ARE WILLING TO USE THOSE TOOLS. WE MUST LOOK TO THIS CONGRESS FOR THE ROOTS OF THE PROBLEM AND WE MUST LOOK HERE FOR THE SOLUTIONS TO THE PROBLEM. PASSING THE BUCK TO THE EXECUTIVE BRANCH ALONG WITH A SIGNIFICANT PIECE OF LEGISLATIVE PRIMACY IS ILL-CONCEIVED AND ILL-ADVISED. I SINCERELY HOPE THAT YOUR COMMITTEE, MR. CHAIRMAN, AND THIS CONGRESS AS A WHOLE, WILL REJECT THE LINE ITEM VETO PROPOSALS BEFORE US AT THIS TIME.

THANK YOU.

Mickey Edwards

A Conservative's Case Against The Line Item Veto

Frustration is the emotion with which conservatives are most familiar, and in that frustration, desperate for progress in their war to change national priorities, conservatives are sometimes tempted to toss away the cornerstones of their political value system in exchange for small and temporary victories.

Political conservatism, at its root, is a philosophy of diffusion. It is a philosophy that has as its thesis the distribution of political power among local agencies; it has as its antithesis the concentration of power in a single place, and the most feared of such repositories is the central government.

Unfortunately, conservatives who ought to know better, including some of the leading political thinkers of the right (Lew Lehrman and Jack Kemp come to mind) have, in their frustration, embraced concepts that would concentrate substantial new powers in that most concentrated of power bases, the presidency.

The latest such scheme for concentrating power in the hands of a single chief executive—offered, remarkably, by conservatives—is a plan to give the president a heretofore unprecedented power to veto individual items within congressional appropriations bills. Ronald Reagan, the nation's principle spokesman against big government, has asked for such power. House Republicans, on a test vote offered by conservative Rep. Phil Gramm, voted overwhelmingly to give it to him.

But conservatives have overlooked what the result could be. Under such a transfer of power, if a Jimmy Carter—or a Walter Mondale—chose to veto an appropriation of funds for construction of the B1 bomber, a weapons system repeatedly supported by majorities in both the House and Senate, a small band of liberals, a mere one-third of the House and Senate, could kill the program by refusing to override the veto. While a Carter, even a Mondale, would not be likely to veto an entire defense appropriations bill, and would thus be somewhat bound by congressional determination to proceed with systems such as the B1, the power to accept most of the appropriation but single out specific items for veto could (and, if Mondale were

By David Goodenough

to become president, probably would) eliminate defense items crucial to the national security.

The problem with propositions such as the line item veto is the certainty of change. Powers delegated to the presidency to be dispensed according to the wisdom and conscience of a Ronald Reagan will remain in place for the time, certain to come, when a Democrat again ascends to that increasingly lofty presidential throne.

Congress is that branch of government most compatible with the basic philosophical bent of the political conservative. In it, power is fragmented among a large number of men and women, sensitive in varying degrees to the sentiments of home folks. The frequency of House elections increases the role of local constituencies and diminishes the central power. That diffusion of power is an essential to the conservative concept of government.

If the concentration of power in the federal government is the single philosophical element on which all conservatives unite (to be generally opposed to the concentration of power in Washington is the root of American political conservatism), then, by extension, the focusing of that power in a single individual should likewise arouse fear.

Unfortunately, the frustration of having a conservative president who is somewhat hampered by the need to co-exist with a Democratic Congress causes one to chafe under the restraints of the system. There is a frustration at how hard it is to get things done; how difficult it is to bring about change. In their frustration, these impatient conservatives forget that difficulty in bringing about change is again a cardinal virtue of a Jeffersonian conserva-



tive government. The harder it is to write and rewrite laws, the greater the protection for the people.

Unfortunately, the philosophical roots of what we are about are sometimes forgotten in the pragmatic rush to achieve immediate ends. Conservatives, who ought to be champions of the congressional veto—increasing the power of the elected representatives of the people to block regulations imposed by the federal bureaucracy—find themselves opposing congressional interference with bureaucrats appointed by "our guys." They do so oblivious to the enduring nature of laws and precedents (meaning that what we do to them they will later be able to do to us).

This acquiescence to the imperial presidency for the immediate short-term gain threatens the foundation of our form of government—a system carefully designed to balance powers and limit central authority. To set constitutional protections aside for short-term expediency is to win temporary advantage at a very high long-term cost. The frustration of conservative leaders is understandable, but the temptation to place more powers in the hands of an already powerful chief executive is a temptation that should be resisted.

The writer, a Republican representative from Oklahoma, is a member of the House Appropriations Committee and national chairman of the American Conservative Union.

Mr. EDWARDS. I will be glad to answer any questions you have.
 Senator HATCH. Thank you, Congressman Edwards. We appreciate your statement today.

If the line-item veto were put into force today, defense appropriations would be particularly vulnerable in providing vetoes, because they constitute more than one half, actually 57 percent of the proportion of the budget, subject in fact to item vetoes.

What would be your reaction to that observation?

Mr. EDWARDS. Well, I think it is important when people begin to get excited about the possibility of giving this President powers that he does not otherwise have to control spending, that we remember the story of the goose and the gander.

I think it is quite likely that this President, if he had the powers, in another term, would use them to strike domestic programs that you and I might agree should be cut, but there will some day, and I would address this to Republicans, looking at the upcoming election, there will some day be a Walter Mondale, or a Gary Hart, or a Jesse Jackson in the Presidency, whether it is these particular ones or not, and the line-item veto would in fact create a very inviting target for people who want to cut back on defense spending.

As an example, right now it takes a majority of the Members of Congress who lump together spending bills in one package, and they say this is our defense package, and very few Presidents are able to successfully get away with vetoing a defense appropriation.

But if the President did not need to do that, but could simply veto one item, the B1 bomber, the MX missile, whatever one item he wanted to single out, he would only need one-third of one House of Congress in order to sustain that, and it would greatly endanger some of the weapons systems.

Senator HATCH. Let us say that some of the comments made by some of the candidates indicate that they would strike a lot of the new defense programs.

Mr. EDWARDS. Absolutely.

Senator HATCH. If they did that, it would be decades before we could catch up to the problems that would be generated by weakening our defense now. There would be political pressure to do that.

Mr. EDWARDS. There would be political pressure, and I think, Mr. Chairman, you have made a very excellent point, in the fact that once we defer the B1 bomber, once we defer going ahead with a program, it is extremely expensive to try to go back and catchup.

Senator HATCH. It is almost impossible. The B1 bomber would have cost a lot less had it not, in essence, been cut out in previous administrations. Assuming it is right to have the B1 bomber.

But your concern is that we are going to have different philosophies in the Presidency, by necessity, over the next couple of years. One President may want to cut domestic spending programs that are considerably out of line, and another one may want to cut military programs, and in both cases if the wrong programs were cut and Congress cannot override the veto, it would be a real problem.

Senator Dixon's constitutional amendment would provide for a simple majority override.

Does that lessen your fears, or concerns about a line-item veto, at all?

Mr. EDWARDS. That would lessen my fears. I think Senator Hatfield's point about transferring the burden politically to the President is a valid point. I am less concerned by that than I am about the two-thirds type of veto override. Because what that does is transfer effective control over spending programs from the Congress to the President, whereas today a majority of the Congress can say this is what we are going to spend our money for, if you went to the two-thirds override, which is proposed in most of the legislation, what you have done is say that the President, plus one-third, determines spending, and you totally change where the power is in spending, and remove the Congress effectively from that part of the powers that it was given.

Senator HATCH. Of course, both you and Senator Hatfield, who are against the line-item veto that the President has suggested, or even which Senator Dixon has suggested, have indicated that your opposition is based not only on the prospect of Executive abuse of the power, but also on the prospect of congressional abuse. Congress could further increase spending and place on the President the burden of vetoing popular programs.

You have indicated here today that Congress probably is the major problem as far as spending practices in this country. If you do not have a line-item veto power, what would you think would be the way to get the Congress to live within its means—to live within certain spending restraints?

Mr. EDWARDS. Senator Hatfield is chairman of Appropriations, and in the House, I am a member of the Appropriations Committee—I think we are both very conscious of the fact that the large element of spending, which is entitlement programs, is beyond the scope at this point of the Appropriations Committees.

It seems to me that when you are spending half of your budget on that particular category of programs, it is far more important that instead of dealing with public relations programs, such as line-item vetoes, that we get serious about coming to grips with the entitlement problem. Bring entitlement programs under the purview of the Appropriations Committees, or in some way come up with some across-the-board means of dealing with those programs. Perhaps come up with new internal procedures, to make sure that we have to pass appropriations bills, and debate them, rather than tucking them into continuing resolutions each year. There are other ways, other than changing the whole system of our Federal Government and concentrating power in the hands of one very strong Chief Executive.

Senator HATCH. Well, I can say that our efforts to do this have not been very successful. We passed most of the appropriations bills last year, one of the few times we have done that in recent years. In that appropriation process it seems to me we still did not restrain the growth of Federal spending programs, and certainly not the growth of entitlements.

If you had a choice between a line-item veto and a balanced budget tax amendment, the one that we passed in the Senate in 1982, what would be your choice?

Mr. EDWARDS. Well, Mr. Chairman, I was one of the principal pushers in the House for the constitutional amendment.

Senator HATCH. I thought that would be your choice. I just wanted to make sure it was brought out.

Mr. EDWARDS. I very much favor that approach. I think it enables us to come to grips with the problem, without reshaping the fundamental nature of our Government, to a government that has one strong Chief Executive at the top, which invites great abuse of power.

I think the balanced budget approach, balanced budget amendment approach is far superior.

Senator HATCH. It seems to me that you are making an excellent case for preferring the balanced budget amendment to restrain congressional spending practices, and the abuses of the budget process by Congress. Current budget processes suffer from a clear bias in favor of spending. The balanced budget tax limitation approach really causes Congress to look at that bias and face the problems. Thus, the balanced budget amendment deals more forthrightly with the causes of spending largess than does a line-item veto.

Mr. EDWARDS. Absolutely. I completely agree.

Senator HATCH. Well, thank you. We sure appreciate your being here today, and we appreciate the testimony that you have given.

Mr. EDWARDS. I appreciate the fact that you are having these hearings.

Senator HATCH. Thank you.

I do not see Senator Mattingly, so we will begin with our last two witnesses.

We will bring out Prof. Peter Schultz from Catholic University and Mr. John Palffy from the Heritage Foundation.

We will take Mr. Schultz first, and then Mr. Palffy.

STATEMENTS OF A PANEL CONSISTING OF PETER SCHULTZ, PROFESSOR, CATHOLIC UNIVERSITY; AND JOHN PALFFY, POLICY ANALYST, THE HERITAGE FOUNDATION, WASHINGTON, DC

Professor SCHULTZ. Well, thank you, Senator.

It is the first time in this forum. I am usually teaching, I am usually the one that is higher, so I am a little bit nervous.

Senator HATCH. That is something that we allocate to this great body. We are happy to have you here.

Professor SCHULTZ. I have given Mr. Rader a prepared statement, and I suppose that will be entered into the record.

Senator HATCH. Without objection, we will put it into the record.
[The following was received for the record:]

PREPARED STATEMENT OF PROF. PETER SCHULTZ

An Item Veto: A Constitutional and Political Irrelevancy

"The practice of loading the budget with unnecessary spending--and then waiting until the eleventh hour to pass a Continuing Resolution on the assumption that it was safe from a Presidential veto--has gone on much too long. It is one of the principal reasons why the growth of Government spending is still not under control."

Ronald Reagan, Veto Message of House Joint Resolution #357, 1981

No doubt many Americans share the image created by the President's words quoted above, viz., that because Congress knowingly appropriates money unnecessarily, it uses somewhat underhanded or devious means to work its will against the wishes of the people or at least against those of the President and certainly against any sound fiscal judgment. This image is quite believable and in its own way is even comforting. Quite believable because Congress has long been criticized for its propensity to spend, spend, spend. Comforting because the image suggests that congressional spending, like other illegitimate practices, is only able to thrive in the closet, so to speak, and if brought out in the open or an additional check placed on Congress, all would be well. Under the public eye or under the control of a powerful and public-spirited overseer, the sin of congressional spending would either wither altogether or at least be reduced from a mortal sin to one of venial proportions. An item veto is appealing given this image in that it would meet congressional fiscal irresponsibility in both ways at once: it would allow the President to reveal and excise congressional excesses.

Today, with the nation facing bulging budgets and deepening deficits, an item veto looks particularly appealing. It will, some think, allow the President to "discipline" Congress, and of course discipline is all the rage today. The President will be able, it is argued, to cut deeply into the congressional practice of spending to satisfy special interests "back home" and this will allow, finally, for budgetary control and fiscal responsibility. Thus, an item veto is made to appear to be the one change necessary in order to ensure fiscal responsibility.

Not quite. The problem with an item veto is that is no solution, or almost no solution, for the current budgetary problems. The image created by the

President's words quoted above is misleading, as is most of the rhetoric of those supporting an item veto. This is not to deny that more budgetary control is necessary. It is. But it is absolutely essential to be clear about the sources of our current problems in order that we prescribe the right solution.

According to the proponents of the item veto, the source of current budgetary problems is the fiscal irresponsibility of Congress. That is, Congress appropriates money for non-essential programs, for "pork barrel", as it once was called. This is, of course, an old argument, going back to the late nineteenth and early twentieth centuries. According to this analysis, Congress' propensity may be traced to the Constitution itself, to its peculiar separation of powers among several distinct and independent departments which encourages, in this case, congressional fiscal irresponsibility because that institution alone, by and large, controls appropriations. Because it is representative, Congress always has its ear to the ground in order to respond to the needs or even the wishes of constituents and other groups seeking federal dollars. Hence, until the separation of powers is modified, giving the President more control over appropriations, fiscal irresponsibility is "built into" our political system. ¹

Although having all the markings of dogma, this institutional analysis needs scrutiny. Are current budgetary problems due to institutional irresponsibility, to the fact that Congress can no more resist spending than an alcoholic can resist a drink? Or are the problems due to "politics," to the fact that certain policy decisions--expensive policy decisions--have been made and we are just discovering this fact? It seems very difficult to deny that the roots of current spending problems are political when both liberals and conservatives are willing to spend money and incur huge deficits to advance programs they deem essential to the well-being of the nation. To be sure, both liberals and conservatives trade the charge of "fiscal irresponsibility" but the fact is that neither group is willing to sacrifice what it deems essential to the nation for the sake of a balanced budget. Of course, insofar as these programs ² are essential, this behavior is perfectly reasonable. In sum, it is not Congress as an institution or the constitutional distribution of power that accounts for the current deficits. Rather, these deficits are best accounted for by our politics, by what current opinion deems essential to the public good,

It would be easy to substantiate this analysis by identifying those programs which do the most to "bust the budget." These programs were not created nor are they continued surreptitiously or even ashamedly. They were passed openly, which is to say politically, and this is how they should be debated,

Focusing on institutions obscures the most important questions: Do we need a jobs program? Do we need to rebuild our defenses? However much discipline is necessary, it should be preceded by deliberation.³

Consider, too, the promise and the fate of the Budget and Impoundment Control Act of 1974. Virtually everyone recognized this act as a remarkable adaptation of previous practice, a procedure intended to (1) allow Congress to determine the priorities of the nation as reflected by the budget and (2) to encourage Congress to exercise fiscal restraint. To be sure, fiscal restraint does not seem to have followed, which according to most commentators proves that Congress is congenitally or institutionally defective, at least with regard to spending matters.⁴ There is, however, another way to assess the failure of the Budget Act, viz., that its assumptions were false. That is, one can argue that the Budget Act failed because it was based on the assumption that fiscal extravagance on the part of Congress is more an institutional phenomenon than a political one. That Act failed because it tried to solve institutionally what can only be solved politically.⁵ The proposed item veto suffers from the same misperception, attempting to do institutionally what can only be done politically. From this perspective, an item veto is irrelevant. Fiscal responsibility will follow from certain political choices, not from making institutional adaptations.⁶

But one might argue that whatever the general shortcomings of an item veto, it would be a useful tool to give to the President for the sake of some budgetary restraint. After all, the phenomenon described by the President in his veto message does exist, requiring that the President either veto an entire appropriations bill, sometimes virtually stopping the government altogether, or sign the measure and contribute to the apparently ever-increasing deficit. An item veto, although not able in itself to guarantee fiscal responsibility, would amount to a noticeable improvement in the federal budgetary process.

The strength of this argument is that it recognizes the major limitation of an item veto, that it is in itself altogether insufficient to meet what is perceived to be "fiscal irresponsibility." Its weakness is that it fails to take into account (1) some of the undesirable side-effects of such a power, (2) the deficiencies of the proposed amendment and (3) the possibility of a more promising alternative under the original constitutional distribution of power, viz., impoundment.

First, regarding the side-effects of such a reform, it is not at all clear that granting the President an item veto would encourage congressional res-

possibility. More than likely, Congress would prove willing to increase the size and complexity of appropriations bills, forcing the President to cut or reduce particular items as he sees fit. Then a congressman could tell his/her constituents that he had tried to advance project X, Y, or Z, but the President vetoed the funds and a majority of one house agreed with the President. As current practice shows, under the present arrangement Congress as well as the President faces the choice of passing bills likely to be vetoed because of objectionable items, thereby endangering the governmental process as a whole. Under the present system, therefore, Congress has more incentive to act responsibly than it might if the President possessed an item veto.

Again, an item veto could encourage presidential irresponsibility with regard to pressing his demands upon Congress. That is, although the most common scenario supporting an item veto has the President vetoing what are deemed to be clearly unnecessary appropriations, with an item veto it would be easier for the President to threaten to veto certain appropriations unless the interested representative or senator agreed to "play ball" with the President on other matters. Of course this possibility exists under the current arrangement, but given the need to veto an entire bill, the President is less likely to try to so "persuade" members of Congress. Such persuasion might become commonplace if the President possessed the power to veto particular items of appropriations bills.

Finally, an item veto might contribute to a further fragmentation of our politics and of our political discourse. The most common scenario of a president vetoing clearly unnecessary appropriations viewed as particularly "offensive" by a particular interest group or, more likely, by an interest group with only one issue on its agenda. An item veto would provide an incentive for such groups to focus their intensely felt concerns on the President because under the proposed amendment, the President could not argue that, on balance, an appropriations bill was a good one or that signing a particular bill was essential to keep the government going. Given the premium currently placed on "intensity" and the difficulty of denying such "good faith" a positive response, an item veto might well contribute to the further disintegration of our politics.

So much for the side-effects of an item veto. Next is the question of the Dixon proposal itself. Its most puzzling aspect is the provision allowing a simple majority to override a president's decision to veto or reduce a particular appropriations item. How would such a provision check Congress, if

Indeed its propensity to spend is inherent to that institution? Senator Dixon argues that his proposal intends to be "well-balanced" in this regard: "It will help restrain spending without upsetting the careful set of checks and balances among the three branches now contained in our Constitution." Congressional Record, S837, Feb. 1, 1983) Perhaps Senator Dixon's description is correct, but if so balance represents the fatal flaw of his proposed amendment. As President Ford discovered when acting under the impoundment provisions of the 1974 Budget Act, when the politics of the country allows, Congress will not tolerate fiscal discipline, especially when only a simple majority is needed to avoid it. It is the requirement of an extraordinary majority that gives the President's veto power meaning, that makes it more than "advisory".

At best, the item veto as proposed by Senator Dixon is advisory.

And this brings to the fore the final issue considered here, that of impoundment. Finally, an item veto is unnecessary because under the original distribution of power made by the Constitution impoundment of funds by the President is legitimate. Moreover, this practice is preferable to an item veto. This is not, of course, the place to make a full-blown argument on the constitutionality of impoundment, but it can be shown that this practice is, at least arguably, constitutional.

The starting point is to recognize that while the separation of powers in the Constitution is intended to achieve balanced government, this balance is tilted in favor of an independent executive. Independence requires both separateness—e.g., a separate mode of election—and broad powers derived from the Constitution rather than from the legislature. An independent executive is largely indistinguishable from a powerful executive, one able to act unilaterally for the public good. It is this capacity that some of the framers of the Constitution strived, successfully I think, to have embedded in that document.⁷

However, it needs emphasis that an independent or powerful executive does not mean an all-powerful executive, one which was intended to displace the legislature and assume its prerogatives. The framers were aware, keenly aware, of the strengths as well as the limitations of legislative bodies, of what they could do well (deliberate), of what they could not do well (promote and maintain unity), and of what they could not do at all (act with secrecy and dispatch). While the President's powers are broad, they are best understood as intended not so much to displace as to supplement or complete the legislative

⁸
powers. Hence, it is permissible to speak of a government under the Constitution of broad and comprehensive powers.

The argument is this: The Constitution grants the President broad powers meant to supplement those granted the legislature and in a way that makes those powers whole or complete. It is commonly granted that Congress appropriates and the executive spends. Interpreting this distribution of power in light of the above, it may be argued that the spending power should be deemed to include the power to impound, i.e. to refuse to spend. Hence, impoundment is arguably one of the President's implied powers.

But granting this, why is impoundment superior to an item veto? First, because the department most in need of restraint cannot easily override the President's decision not to spend. In fact, constitutionally speaking, Congress has little recourse when the President impounds.⁹ Politically speaking, however, the relationship is different. In the political arena, Congress is by no means simply powerless to affect the President's decisions or the public's perceptions of those decisions. And if the first part of the argument here is correct--that budget battles are political battles--the political arena is precisely where the issue should be decided.

Second, impoundment is superior to an item veto because its limitations are "built in", so to speak. First, impoundment is not explicitly granted to the president by the Constitution. However sound it is, it is a power that rests on inference and implication. Second, impoundment smacks of prerogative, the power to defy the law, and therefore it would be used sparingly by presidents or only when a president deems its use essential to advance the public interest. As Hamilton points out in the Federalist, a qualified veto will be used more readily than a absolute one because the latter offends the sensibilities of republican citizens. Impoundment then is at once more effectual than an item veto and less likely to be abused by the president.

Make no mistake, impoundment is not endorsed here because it is thought that such a power would be sufficient in itself to achieve what is being called today "fiscal responsibility" or a balanced budget. As suggested, impoundment should be used selectively, to stop only the most flagrant instances of fiscal irresponsibility. If this is taken to imply that the Constitution and its distribution of power is incapable of ensuring "fiscal responsibility," so be it. We would only warn that no constitution or constitutional distribution of power is in itself sufficient to such a purpose. This alleged "incapacity" is not a constitutional defect because a constitution, and especially the American

Constitution, is meant to structure not supplant politics. Or, put differently, whatever the virtues of constitutional government, such government was not intended and should not be understood as rendering self-government unnecessary.

NOTES

1. Although this institutional explanation or argument has a long history, it came into its own in the late nineteenth and early twentieth centuries with the rise of "progressivism". One of the best and certainly one of the most illuminating statements of progressivism is Herbert Croly's, The Promise of American Life (New York, 1909). For a critique of the progressives, at least with regard to their thoughts on the presidency, see James Ceasar, Presidential Selection: Theory and Development (Princeton, 1979).
2. Some observers have actually suggested that the institutional arrangements under the Constitution discourage spending or thinking in any other than economic terms. For example: "The [national political] system is one of checks and balances, and the Federal machinery for combatting and deflating departmental concepts of what is necessary is so extensive and at times so difficult of persuasion that unless departmental representatives proceed to present their viewpoint in a vigorous and tenacious manner, objectives which are essential...to the public welfare might...be submerged by some purely budgetary objective, or by the budgetary power, rather than served thereby. At this point the departmental budget officer proceeds on the principle that the government exists to serve the needs of a great people and not primarily for the purpose of creating a model budget system...." William A. Jump, "Budgetary and Financial Administration in an Operating Department of the Federal Government," p. 5, cited in Wildavsky, The Politics of the Budgetary Process, 3d Ed., (Boston, 1979), 18-19. As this suggests, the "budget reform" which is held so dear and espoused by many today can easily subvert politics--serving the needs of a great people--for the sake of "model building". One can argue, even today, for spending huge sums of money without being an unreconstructed prodigal. The argument must be, of course, political.
3. As typically reported, "payments for individuals", the largest part of "non-defense" spending, accounts for the huge growth in the federal budget outlays between 1952 and 1980, rising from under \$300 billion to about \$750 billion (in constant 1982 dollars). But this growth was hardly accidental or unintended, with the most visible "turning point" being 1965 and the advent of the Great Society. See Dennis Ippolito, Congressional Spending (Ithaca, 1981), p. 27. As has been recognized by almost everyone, there has been a change in priorities over the past twenty-five years from defense spending to social welfare spending. And it would be more than a little misleading to suggest that this change "just happened", i.e. was either unplanned or unnoticed. Therefore, it is also more than a little misleading to suggest that different institutional arrangements would have offset the alleged fiscal excesses which have resulted. Indeed, as Note 2 immediately above illustrates, one can argue that the institutional arrangements in existence hindered fiscal excesses.
4. Among numerous studies, one of the best is Congressional Spending (Ithaca, 1981) by Dennis S. Ippolito.
5. "The size and shape of the budget is a matter of serious contention in our political life. Presidents, political parties, administrators, Congressmen, interest groups, and interested citizens vie with one another to have their preferences recorded in the budget. The victories and defeats, the compromises and bargains, the realms of agreement and spheres of conflict in regard to the role of the national government in our society all appear in the budget. In the most integral sense the budget lies at the heart of the political process." Aaron Wildavsky, The Politics of the Budgetary Process, 3d Ed. (Boston, 1979), 4-5.
6. But it might be asked, What about the states? That is, most of the states have item-veto provisions in their constitutions and it has been argued that although "spending to mollify special constituencies exists it is disciplined by the governor's line-item veto power." Indeed, it has been asserted that "New Jersey's budget process works, and so does the budget process in a lot of other states where the governor has line-item veto power," while the federal budget process is "about as whacky as something out of 'The Dukes of Hazzard'." The Wall Street Journal, p. 30, Sept. 22, 1983.

The best reply is to ask, What about the States? That is, if the budget processes of the states has been perfected by the existence of a line-item veto provision, how did New Jersey and other states get into their present difficulties? After all, the states have had an item veto for some time and nonetheless they have had to deal with some large budgetary problems, i.e., large deficits. Therefore, it is misleading to credit the current examples of fiscal discipline and restraint to an item veto provision, while ignoring the political mood of the country or at least the mood of some of the states. In fact, it strains credulity to argue that the former is more important than, or the engine that drives, the latter. At best, an item veto facilitates restraint. Whether it would do so at the federal level remains to be seen.

7. The best secondary source supporting the argument herein is Charles Thach, The Creation of the Presidency, 1775-1789 (Baltimore, 1969) and the introduction therein by Herbert J. Storing. The best primary source remains the Federalist, especially numbers 70-77.

8. One example must suffice here. The Congress' powers regarding foreign affairs are "literary" or "declarative", while the president's powers are "demonstrative". Congress is granted the power to declare war and to grant letters of marque and reprisal. The President, on the other hand, commands the nation's armed forces, i.e., makes war, and also makes treaties supported by the Senate. This distribution of power reflects the framer's conviction that while legislative bodies are best at deliberating, executives and especially unitary executives are best at acting. Hence, when the nation finds it necessary to act, the president is its foremost officer. Preferably, this action should be preceded by deliberation and declaration, but this is not always possible.

9. This fact has been reinforced by the Supreme Court's decision and opinion in Immigration and Naturalization Service v. Chadha, et. al. (No. 80-1832). It would appear that this decision renders the impoundment control provisions of the Budget Act of 1974 unconstitutional. Of course, this does not mean that Congress is without any constitutional means of controlling impoundments.

Professor SCHULTZ. What I want to do is summarize that statement, speak briefly about that statement, and leave that statement for the record.

It seems to me the question is—the question that has to be asked—

Senator HATCH. Could you hold for just a second?

I notice Senator Mattingly is here, and I would like to accommodate him.

If he could just come up and take this one chair, we will take you first, Senator Mattingly, and then we will go back.

Fortunately, we were right at the beginning of Professor Schultz' testimony.

If you will forgive me for that.

I know Senator Mattingly has a really tough schedule, and I would like to accommodate him.

STATEMENT OF HON. MACK MATTINGLY, A U.S. SENATOR FROM THE STATE OF GEORGIA

Senator MATTINGLY. Thank you, Mr. Chairman.

I would like to commend you for calling this hearing to discuss the line-item veto. As you know, I had introduced two measures, Senate Joint Resolution 178 and S. 1921, which are now pending before your Judiciary Committee, to grant the President authority to veto individual items in the appropriation bills.

Additionally, though, I have drafted an amendment which I will introduce in the Senate, to consider the deficit reduction package, which will authorize a scaled down version for the line-item veto, and essentially what it will do is: One, it is going to grant the President authority, by legislation, rather than a constitutional

amendment, to veto individual items and appropriations measures; second, it is going to allow the Congress to override items vetoed by the President by a majority vote, rather than the traditional two-thirds overriding requirements; and third, it is going to contain a provision to sunset the line-item veto authority, after 2 fiscal years.

Mr. Chairman, the line-item veto is not a partisan issue. Democrats as well as Republicans support the concept, and in all candor, there are members of both parties that oppose it. This is not a conservative or liberal issue, for you can find people of all political stripes, on both sides of this debate.

Probably the only thing that Franklin Roosevelt, Harry Truman, Dwight Eisenhower, and Barry Goldwater had in common was their belief in the need for a line-item veto. So really, this is not a new concept in Government.

The only thing new is our desperate need for some form of spending control to be returned to our Government. I think when our Founding Fathers set up our system of Government, they could not see 200 years down the road of history. Congress was in session just a few weeks of the year, and those appropriation bills were very small and manageable. In those days the Presidential veto was able to control the size of the spending legislation.

But times have changed. The entire Federal budget for 1790 would not even pay for the paper clips that the bureaucracy now wastes each year. There are just 13 appropriation bills. Often the country is operated by continuing resolutions passed at night, or the last day.

Now, if the President vetoes that legislation, he has to shut down the Government. This is pure foolishness. We should not attempt to operate this way. The Governors of four-fifths of the States do not operate this way. They have the line-item veto, and they use it.

As a result, my home State of Georgia, and most other States, have a balanced budget. They have to balance the budgets. If they do not, they would be voted out of office. It is long past the time, I think, that we brought the fiscal sanity to Washington, DC.

Now, there are those who are going to point the finger at the executive branch, and say this is where the blame lies. We are in the middle of a Presidential election now, and no one can follow the news without hearing from the newborn deficit haters.

Mr. Chairman, let me just say that there is more than enough blame to go around. The truth of the matter is that only Congress has the power to appropriate money. The President recommends, and the Congress spends.

Look at the Constitution. We in Congress are responsible for the mess. Let me address another issue, that of the balance of powers built into our form of Government.

Some say the line-item veto would upset this balance. The truth is that the balance conceived 200 years ago, when the first Congress was sworn in, has not existed for some time. The power to spend money granted to Congress now exists without much of a threat by veto of the President.

We can talk all manners of spending goodies in the legislation, knowing the President will swallow the unwanted, in order to receive the approval of funding of vital elements of Government.

Now, I am convinced that we can devise a line-item veto that will retain the ultimate authority for spending in the legislative branch, and such is the aim of the amendment that I described above. A Presidential veto can be overridden. It is possible to devise a new provision that would allow an appropriation line-item veto to be overridden by a simple majority of Congress.

We have to have that authority now to pass the legislation, so this is not really opposing any new burden, major burden, upon the Congress. But it would do this, it would focus—it would force an individual vote on questionable expenditures. No longer would bills be voted down in committee for favored Members of Congress, without any fear of having to stand up and be judged in the daylight.

I think this would be good for our Government, and it would be good for the taxpayers. No matter whether the President is a Democrat or a Republican. If an appropriations item cannot get a majority vote in both Houses of Congress, it does not deserve to be passed. I think to let any doubtful project be judged on its own merit, and not on the facts that is attached to the funding of the popular programs.

Now, as a member of the Appropriations Committee, what I am saying here is heresy, but it has to be said. Congress has had ample opportunity to control its appetite, the taxpayers' dollar, and has failed miserably. It is time to make adjustments in the system.

I know it is a lot to ask. We would have to give up some of our power, that is not very popular here on Capitol Hill, but if we can help achieve a balanced budget, I think there would be an outpouring of praise from beyond the Potomac. There would be credit enough for members of both parties. Let us at least try to adjust a system so that it can work.

Mr. Chairman, I appreciate the opportunity that you have given me to present my views. The new Mattingly amendment, or proposal, is going to be offered on this deficit reduction package in the form of an amendment which will, as I said before, will be sunset in 2 years, it will be done legislatively, and will only take a simple majority to override.

I think, just this past Friday, when I was in the State of Georgia, I was with my Governor. Governor Harris made a comment, we were talking about the line-item veto, he said it is very useful, because the legislative branch, by just knowing that it is there, it serves as a deterrent.

Now, I do not believe that we can wait for a constitutional amendment. I want us to try to pass a constitutional amendment on the line-item veto, but I think when we have \$180 billion deficits, and we have got a deficit reduction package that is really back loaded and not front loaded, I think it is time that we try to do something legislatively, if possible, in order to give this President some means of trying to restrain this spending.

I think some people, maybe who have come before you today, I do not know, might have said that it really only applies to a small percentage of the budget. But if that is a fact, which it is, it also says that it is not a meat ax type of approach, to try to control spending, and also says that we ought to really give it a chance.

Thank you.

Senator HATCH. Thank you, Senator Mattingly.

Senator Thurmond, we are happy to have you with us, and do you have any questions for Senator Mattingly?

The CHAIRMAN. Mr. Chairman, I do not have any questions, basically. I have a statement that I would ask to have follow the opening statement of the chairman.

Senator HATCH. Without objection, so ordered.

The CHAIRMAN. I just want to commend Senator Mattingly. I was very pleased to join him on the bill, and on the constitutional amendment. I believe you have both.

Senator MATTINGLY. That is right.

The CHAIRMAN. I hope we can get one of them through. Of course, it will be easier to get through the statute, since it takes only a majority, and I am very anxious to see action taken on this.

When I was Governor of South Carolina, the Governor had then, and still has, the authority of a line-item veto. I could veto items that some legislators would hesitate not to put in the appropriations bill, because there was, like it is up here, some trading done, and items get in there that really should not be in an appropriations bill. The President can settle those items up here, just like the Governor can in a State.

I think it would be most helpful for the President to have this power, and I think it would save a lot of money. I hope that action will be taken on this important matter.

Senator HATCH. Thank you, Senator Thurmond.

Thank you, Senator Mattingly.

I may have some questions to submit to you in writing, if you could respond in writing.

Senator MATTINGLY. Thank you, Senator.

Senator HATCH. Mr. Schultz, we will start with you again.

Professor SCHULTZ. All right. I think, as everyone knows, the problem that leads to the attractiveness of the item vetoes is the problems of deficits, where do these deficits come from?

Is the item veto, the line-item veto, the tool with which to deal with the problems of deficits? And I think the answer is no.

Now, the popular view expressed here by many, several here today, and also by President Reagan in 1981, when he was vetoing House Joint Resolution No. 357, and I quote the President: "The practice of loading the budget with unnecessary spending, and then waiting until the 11th hour to pass a continuing resolution on the assumption that it was safe from a Presidential veto, this practice has gone on much too long. It is one of the principal reasons why the growth of Government spending is still not under control."

In essence, I think the argument that is made, it takes several forms. One is the "pork barrel" argument. Congressmen, or Congress, because of its representative character, passes too much "pork," too much idiosyncratic legislation, or legislation to serve idiosyncratic, local, parochial interests. As Senator Hatfield mentioned you could cut out—and my colleague at Catholic University, Norm Ornstein, has pointed out that you could cut out all the "pork barrel" in the budget, and you would not come close to balancing the budget.

A different argument—well, the same argument put differently, and we heard it again expressed here by Members of Congress, and

even by Senator Hatch (I always try to disagree with everyone). Is that Congress is congenitally, institutionally unable to control itself when it comes to spending money. It is not the Congress' money, it is my money.

Well, it is not much of my money, I teach, so I do not pay much taxes. But it is not their money, and they spend it rather freely. Congress spends, spends, spends, and always spends too much. Now, that is a very popular view.

Now, for fear of—one, the lesser fear of not being invited back, the greater fear of being committed to St. Elizabeth's, let me put the following proposition before you. It is my thought, if Congress has a propensity it is not spending too much, but it is spending too little. Congress' propensity is to spend too little. Prove it, you are saying to me.

Well, I mean when we hear liberals and we hear conservatives—

Senator HATCH. I did not say it, but I was thinking it.

Professor SCHULTZ. I know. You know, when we listen to the rhetoric, the one thing we hear is we spend too much. The liberals say we spend too much on defense, and the conservatives say we spend too much on social welfare.

Well, there is a reverse side to that coin, too. Liberals say we spend too little on social welfare, and the conservatives say we spend too little on defense.

Take which side of the coin—take one side of the coin or the other. You have to listen to both sides.

Second, another thing I would point out is entitlements. The very presence of entitlements suggests that Congress' propensity is to spend too little, or another thought I had, and I do not know if you would agree with me, Senator Hatch, or Senator Thurmond, take your salaries. Does Congress have a propensity to spend too much or too little?

Senator HATCH. That is a very sacred subject around here, in some ways, you know.

Professor SCHULTZ. Well, what strikes me, in one sense, is that Congress is always trying to hide raises. You have a real difficulty raising your own salaries. It could be that that tendency is true across the board, and so one way you get around that is through entitlements. People need more money, but the American public, being a commercially spirited people, they know the value of a dollar and they don't like to spend, and they do not like you to spend, so you hide these things through entitlements, or fancy amendments, as to how to raise your salaries, and the salaries of others.

So if you want heresy, there is heresy for today, Congress' propensity is to spend too little and not too much.

All right, so then the question is: Where do these deficits come from? Why do we have these huge deficits? The common view is that they just arose secretly, almost. I think the answer is much simpler. I think the answer is politics, and what I mean by politics is merely choice among competing values.

We have chosen to build a certain kind of society, and that kind of—I will sum up briefly, a society in which the promises of liberty and equality are fairly widely shared. The choice was expensive.

The choice was political. It was not an economic choice. It was made despite the fact that the books will never balance, or you will never be able to balance the books.

When I am in a particularly ornery mood, over at Catholic University, I like to ask the students: Why are you going to college? And the response is, inevitably, it pays. Their response is inevitably an economic argument. I will make more money, and I point out to them that that argument fails. You will not make more money. You will end up losing money by going to college, when you take into account deferred income and other things that you have to put up with, you lose money by going to college.

We may end up losing money on the kind of society that we intended to build, but it still may be a defensible choice. The point is this, an item veto, as I see it, is irrelevant. An item veto is irrelevant, because it represents an institutional response to a political problem. We have deficits because we have made certain political choices.

If you want to reduce the deficits, make different political choices, choose a different kind of society. That is not my recommendation, it is not the recommendation of many people, or anyone, I think.

I think there is an analogy to the Budget Impoundment Control Act of 1974. Everyone knows that that act represents a significant departure from the past with regard to budgeting.

Now, the act had two purposes. One was to set priorities, and the other was to allow for budgetary responsibility, fiscal responsibility. And everyone seems to agree that the act has failed with regard to fiscal responsibility. You do, I think, Senator.

And everyone then seems to suggest that that means that Congress is congenitally unable to control itself.

Well, I would suggest that the budget and the Impoundment Control Act failed for the same reason that a line-item veto will fail. It is an attempt to correct institutionally what can only be corrected politically. You have got to make different political choices if you wish to have fiscal responsibility, or a balanced budget.

And I would argue the same with a balanced budget amendment, it too represents an institutional response to a political problem, and will fail.

So I think the bottom line is that the line-item veto is irrelevant. It does not recognize and it does not address the cause of the deficit. I would only add that I think we have a kind of line-item veto already in the Constitution. The framers, of course, could not see 200 years ahead, as Senator Mattingly said, but they saw a lot from where they sat.

And one could—I think impoundment would represent a better form of line-item veto than either Senator Dixon's or Senator Mattingly's proposals.

Thank you.

Senator HATCH. Thank you.

We will now turn to you, Mr. Palffy, and then I will have questions for both of you.

STATEMENT OF JOHN PALFFY

Mr. PALFFY. My name is John Palffy. I am a policy analyst at the Heritage Foundation in Washington, DC, but I represent my own views, and not those of the Heritage Foundation.

I aim to demonstrate that the line-item veto is both a practical and reasonable institutional correction of Congress' tendency to overspend. I will draw on the experience of the States to propose guidelines for implementation and demonstrate that it could be an effective tool to help limit Federal spending.

Senators Dixon and Hatch have done a better job than I could of explicating why such an institutional mechanism to limit Federal spending is necessary.

It is significant that the debate over the line-item veto arises today. In 1974, the Congress withdrew the President's right of impoundment, and since then it has failed to assume the fiscal responsibility that it took away from the President. Ten years of such a void is now catching up to them.

I would like to emphasize that the line-item veto is not an Executive usurpation of power. Rather, it restores some of the powers of the Presidency, in the face of structural and institutional changes discussed earlier. But it is only practical if it meets two conditions and they must be jointly met, as they are in Senator Mattingly's bill. Those conditions are, one, the President should have the right not only to reject an entire item, but also the right to reduce appropriations, dollar by dollar. This condition would require that the veto be subject to override by a simple majority of Congress.

I imagine that Governor Thompson's statement addresses better than I could the experience of the States. We know that the line-item veto is employed in 43 States. The fact that it has never been repealed by any of those States seems a good indicator of its success.

Generally the Governors cut between 1 and 3 percent per year from each of their State's budgets. The line-item veto would be subject to some politicking and manipulation. For instance, Senator Chiles, in the Congressional Record, has mentioned that Congress might pass excessive spending thus forcing the President to take the heat for rejecting it. It is not clear the present institutions are subject to any less such politicking. In any case, line-item veto must be understood as an executive responsibility, not merely a privilege.

Despite some minor risk and costs, the line-item veto can be valuable fiscal restraint.

One of the most important things that the State experience teaches us is that State courts have arrived at conflicting definitions of the term item. The definition of a line—or exactly what is subject to veto must be clearly defined at federal level.

For instance, is the entire energy construction appropriation in the Energy and Water Development appropriation bill, one item, or does each of the many specific projects in the bill constitute an item on their own account?

Would the President have the right to reject individual projects or would we have to reject the entire energy construction line?

Can a line-item be determined? For instance, Senator Baker has pointed out that regardless of the definition of a line, Congress could get around the veto by making a bill just one line long. Could not wasteful pork-barrel projects be included in the same line as vital Federal projects, thus handcuffing the President in the same manner as that of current omnibus budget resolutions? If you want to extend the power of the line-item veto to its logical and unambiguous conclusion, the conflicting experience of the States suggests that the President be granted the right to reduce appropriations—that he must not be limited to accepting or rejecting entire lines. I will return to the implications and necessary restrictions of this power shortly.

I would like to turn now to the contention made by the House Budget Committee, that the line-item veto cannot cut the deficit. That position is shortsighted and irresponsible.

It is true that the line-item veto would not touch over 50 percent of Federal spending entitlements, that these are the fastest growing programs, and that such spending must be curtailed somehow. It is also true the effects of a line-item veto in 1985 would be limited, because past appropriations also would be exempted. But the line-item veto can help to make some progress, superior to that suggested by the House Budget Committee.

First, defense spending would not be exempt from a line-item veto in fiscal year 1985, even under President Reagan.

For instance, Peter Grace has talked much about military bases with moats around them and other items in the military budget that only can be considered pork barrel. For years the Pentagon and the President have tried to limit such spending, only to be thwarted by Congress, so some such military expenditures might be reduced under President Reagan.

Further, to look only at 1985, is a static and shortsighted examination. We have to look to the future, and all appropriations will expire sometime, and thus come under Presidential review for renewal. Therefore, in time about 40 percent of the budget is actually subject to line-item veto.

I have made some calculations which are available in a paper published by the Heritage Foundation and submitted earlier to the subcommittee, that show the potential long-term effects of the line-item veto. These effects are based on mathematical assumptions that history might have altered, but they do give an idea of the potential for a veto. Suppose the line-item veto had been instituted in 1974. Based on experience in the States, let us assume that only 2 percent of "controllable" spending would have been line-item vetoed by the President each year. Compounding these assumptions over the last 10 years shows a reduction in the fiscal year 1985 deficit of \$49 billion. That is only about one-third of the current actual deficit, but it still represents some progress, and we should not turn our back on such progress.

Likewise, if we were to initiate the line-item veto in fiscal year 1985, and the President were to cut 2 percent of the controllable spending over the next 5 years, the fiscal year 1989 deficit might be reduced \$37 billion.

This brings up the subject emphasized by Congressman Edwards, that \$2 of defense spending is subject to the veto for every \$1 of

nondefense spending. That is something that conservatives should consider carefully.

National defense is a distinctly Federal responsibility. If a President line-item vetoes a pork barrel project, the States could continue funding the project on their own. But if a Presidential veto of a vital weapons system cannot be overridden, no State will undertake the project.

This leads me to the second condition of a line-item veto. It would be unwise to require a two-thirds congressional override of such a veto, thus allowing the President undue control over individual weapons systems. In sum, two conditions to the line-item veto must be jointly met.

One, the President must be allowed to reduce or reject any line item or appropriations. This avoids conflicts, congressional avoidance, and extends Presidential power to its logical conclusions. The purpose of the line-item veto is to "unbundle" appropriations to allow individual examination of each dollar. This is only accomplished with this condition. Such sweeping power, would be unacceptable to Congress, unless it could be overridden by a simple majority, however, to maintain a two-thirds override, and allow the President to reduce spending, is to let the President write the discretionary budget, and that goes too far.

I agree with Senator Mattingly that the present deficit reduction bill would be a good avenue on which to ride this amendment. It would assure the financial markets of the sincerity of Congress in meeting its spending proposals.

Also, attaching the veto to the deficit reduction plan, for the purpose of allowing the President to enforce Congress' spending promises over the next couple of years, might illustrate the role the veto could play as an added tool in the congressional budget process—by giving the President a means to enforce the congressional budget resolution.

It is important to remember that under these guidelines the 50-percent override and allowing the President to reduce a dollar by a dollar, we are not talking about absolute power and imperial Presidency, we are merely restoring prudent fiscal controls by unbundling appropriations bills, as any good business would do.

Thank you.

[The following was received for the record:]

The Heritage Foundation Backgrounder

No. 343

The Heritage Foundation 214 Massachusetts Avenue N.E. Washington, D.C. 20002 (202)546-4400

April 3, 1984

LINE-ITEM VETO: TRIMMING THE PORK

INTRODUCTION

Congress begins consideration of President Reagan's call for a line-item veto April 10th with hearings before the Senate Judiciary Committee. The proposal could come to the Senate floor by late April, when an increase in the debt ceiling is debated. The controversial initiative to strengthen presidential control over appropriations recently has earned surprising, if tentative, respect--largely because Congress seems unable to control the budget process it created ten years ago.¹

The problem is that under current law the President is faced with only two unpleasant options when unacceptably large appropriations bills, such as last November's \$316 billion continuing resolution, land on his desk. He can "rubber stamp" the bills in their entirety, replete with billions of dollars of special interest spending. Or he can shut down government operations by vetoing the bill. No middle ground is available. A line-item veto would permit the President to "blue pencil" individual items from congressional appropriations, so that pork-barrel or special interest spending is not approved merely by "riding the coat-tails" of essential appropriations.

There is nothing new about the line-item veto. Forty-three state governors have the power, and the veto has been requested by virtually every President since the Civil War. Many bills to give the President line-item veto power have been put before Congress--and failed. The line-item veto has not been considered seriously by Congress as a budget control device until today.

¹ See John Palffy, "Giving the Budget Process Teeth," Heritage Foundation Backgrounder No. 305, November 11, 1983.

Opinions are divided, however, on the merit and legality of the proposal. Opponents claim that the line-item veto would be unconstitutional, and that it would grant the President undue power over spending priorities--without significantly reducing the deficit. Proponents respond that it would be constitutional, that safeguards could be added to control White House power, and that the cumulative impact on spending could be considerable. If Presidents during the last ten years had used line-item veto to cut just 1 percent from yearly spending, the FY 1985 deficit could be half its projected level.

Many practical concerns and constitutional objections need to be answered before the line-item veto is enacted. Despite such problems, however, greater control of federal spending is a legitimate responsibility of the President. And more effective executive control of spending is needed to counter the current institutional incentives for Congress to spend taxpayers' money so freely. The line-item veto, therefore, deserves very serious consideration.

WHY ACTION IS NEEDED

Because, under current law, the President must approve or disapprove entire appropriations bills, Congress is able to pass special interest and non-germane "riders" by incorporating them into major last-minute funding bills and resolutions. If the President refuses to sign such "Christmas tree" bills, he often must shut down the government agencies covered by the legislation. The President can, of course, petition Congress to cancel any spending plans, but unless both Houses of Congress approve the rescission by a two-thirds vote within 45 days, the President must spend the funds. Since the Budget Control Act went into force in 1975, 41 percent of all such presidential rescission requests have been ignored by Congress. None of President Reagan's 1983 rescissions were approved.

A line-item veto would strengthen the President's rescission powers. The President would be able to rescind individual appropriations and allow the rest of the bill to pass. This rescission would stand unless Congress explicitly overrode the veto.

Senator Mack Mattingly (R-GA) has proposed two methods to convey the line-item veto power to the President--a constitutional amendment (S.J. Res. 178) and a legislative rule (S. 1921). The amendment would involve the lengthy amending process, requiring approval by 34 states after passage through both Houses of Congress. S. 1921 would grant the President statutory power for the line-item veto. In theory at least, this could become law in time to give the President line-item veto power for the FY 1985 budget. But this could face serious constitutional challenges and, of course, it would be subject to repeal at any time.

A modification of the line-item veto proposal, offered last November by Senators William Armstrong (R-CO) and Russell Long (D-LA), failed in the Senate by only three votes. Armstrong has promised to present it for a vote again this spring, when Congress debates the debt ceiling. A similar proposal (H.R. 5000) has been introduced in the House by Minority Leader Robert Michel (R-Ill.) Under the Long-Armstrong proposal, the President would be required to defer or rescind spending whenever the federal debt exceeds quarterly limits imposed by Congress. This power would be limited, however. He could not eliminate an entire program or project, or reduce any program by more than 20 percent. Nor could he restrict payments to individuals.

Because the President would still have to accept or reject entire appropriation bills under the Long-Armstrong proposal, and because there would be precise limits on the occasions when the President could employ it, the amendment technically is not a line-item veto. Rather, it strengthens existing rescission powers. Senator Pete Domenici (R-NM) has noted,² however, that tying the line-item veto to the debt ceiling may not be very effective; Congress, for instance, could simply raise the ceiling to prevent presidential action.

THE CASE FOR A LINE-ITEM VETO

Deficit Reductions

The fiscal effects of the line-item veto would be limited because 55 percent of federal spending (interest payments and most entitlements) are permanently authorized, not "appropriated," and thus are not subject to presidential review. Moreover, a President cannot veto appropriations committed from previous years--and these appropriations make up approximately 20 percent of each fiscal year's spending. So less than 30 percent of federal spending (or \$260 billion in the proposed FY 1985 budget) would be subject to line-item veto. The House Budget Committee, in a recent analysis, has argued that even 30 percent might prove an over-estimate.³ By assuming that President Reagan would not veto any defense spending, the Committee concluded that less than \$90 billion would actually be subject to a Reagan line-item veto in FY 1985.

The House Budget Committee analysis is subject to at least two criticisms, however. It is not clear, for instance, that defense spending would be exempt from a Reagan line-item veto. The Administration knows well that the defense budget is not immune from pork-barrel spending--Pentagon and White House officials have

² Congressional Record, November 16, 1983, p. S16331.

³ The Line-Item Veto: An Appraisal, Committee on the Budget, U.S. House of Representatives, January 1984.

tried for years to close a number of unneeded military installations, for example, only to be ignored by Congress. And, while President Reagan might focus the line-item veto on the non-defense side of the budget, the converse would likely be assumed the case during a Democratic administration. As previously enacted multi-year obligations expire, over 40 percent of the federal budget would become at some time or other subject to the line-item veto.

American Enterprise Institute budget analyst Norman Ornstein contends that a President would use the line-item veto to cut only 1 percent a year from the budget. State governors typically veto 1 to 3 percent on spending requests per year. While a 1 percent cut in the FY 1985 budget would amount to only \$9.2 billion--a tiny fraction of the projected \$200 billion deficit--the compounding effects of cutting 1 percent from the budget every year soon would become significant.

Table 1 illustrates such cumulative effects. The table indicates what federal spending might have been in past years if the President had used a line-item veto to make very modest cuts in the budget every year, beginning in 1974. As the table indicates, a line-item veto of just 1 percent of total spending would have reduced the projected FY 1985 deficit by \$105 billion. If the President had cut 2 percent of discretionary, or "controllable," government spending (\$265 billion in FY 1985), the projected deficit would be reduced by \$49 billion.

Table 1
THE LONG TERM EFFECTS OF A LINE-ITEM VETO
(in billions of dollars)

	Actual Spending	Assuming 1 percent of all spending cut per year	Assuming 2 percent cut of "con- trollable" spending per year
1974	268	265	266
1975	324	318	320
1976	365	354	361
1977	401	386	394
1978	448	426	438
1979	491	462	477
1980	577	538	561
1981	657	687	636
1982	728	695	702
1983	796	720	764
1984 (estimated)	854	764	816
1985 (projected)	928	823	879
Reduction in FY 1985 deficit:		\$105	\$49

Note: 1984 and 1985 "actuals" are CBO estimates.

Table 2 illustrates the likely consequences of instituting a line-item veto for FY 1985. If the President cut 1 percent from the budget each year, the total savings over the next five years could amount to \$174 billion, and the FY 1989 spending would then be reduced by \$65 billion. If the President were to cut two percent from only "controllable" items, the total five year savings would still be \$99 billion, and the FY 1989 spending reduction would be \$37 billion (assuming controllable outlays remained at 27 percent of total budget outlays).

Table 2
THE LONG TERM EFFECTS OF A LINE-ITEM VETO
(in billions of dollars)

	projected spending	Assuming 1 percent cut of all spending per year	Assuming 2 percent cut of "con- trollable" spending per year
1985	928	919	923
1986	1012	992	1001
1987	1112	1080	1093
1988	1227	1179	1200
1989	1342	1277	1305
Reduction in FY 1989 deficit:		\$65	\$37

Source: Calculations based on CBO budget projections.

It is not clear which constituency has the most to lose from a line-item veto. For instance, of the \$260 billion that could be made subject to the line-item veto in FY 1985, two-thirds would be defense spending. That means that for every \$1 of non-defense spending open to the line-item veto, the Pentagon would risk up to \$2. Moreover, the fastest growing segments of the budget, interest and entitlements (constituting 55 percent of the budget) would not be affected by the veto. Advocates of a strong defense are understandably cautious about a line-item veto that puts at risk twice as much defense spending as non-defense spending.

Cuts in Pork-Barrel Programs

The line-item veto could be an effective deterrent to the practice known as "logrolling." This occurs when members of Congress vote with one another on a *quid pro quo* basis to pass appropriations for programs benefitting local areas and interest groups--even though each program would fail to win a majority on its own. The result is that Congress passes appropriations bills loaded with costly amendments and riders that provide benefits to local constituencies.

A line-item veto specifically would allow for the President, the only official in the U.S. who must answer to the country as a whole, to cancel such spending on a case-by-case basis according to national interests. By returning these projects to Congress for reconsideration on an individual basis, the President would have the power to break the logrolling coalition. The line-item veto seems to be the best available defense against logrolling and omnibus spending resolutions.

OBJECTIONS TO THE VETO

Passing the Buck

The line-item veto is viewed by some, however, as just an excuse for Congress to abandon the search for a responsible appropriations process. Senator Lawton Chiles (D-FL), for instance, fears that Congress:

... would add to program after program, making all our constituents happy and never have to look at the bottom line. We could pass that responsibility over to the President. He would cut the bill back down to size and be the spoilsport.⁴

State experience gives some support to this view. Political observers argue that the Illinois legislature, for instance, adds funds to the budget in hope that the governor will veto them. But strong institutional constraints on total spending, such as balanced budget legislation, reduce such politicizing at the state level. At the federal level, a strong binding budget resolution would also reduce such opportunities. But it should not be forgotten that the line-item veto is an executive branch responsibility, with potentially significant political liabilities as well as benefits.

Presidential Pork-Barrelling

State experience also suggests that "just by having [the line-item veto], you can avoid getting a bill you don't want," says Robert Wilburn, former Pennsylvania budget secretary. "Exactly," retort opponents--the President could use the threat of a line-item veto to further his political interests. He could, for instance, hold hostage discretionary projects supported by Congress to force significant increases in defense spending, they argue, or he could target his veto against political opponents in election years.

Upsetting the Balance of Power

Many congressmen claim the line-item veto violates a literal interpretation of the Constitution--which vests spending power in

⁴ Congressional Record, August 4, 1983, p. S11729.

the Congress. No state or federal court has handed down any decision to this effect, and the Law Division of the Congressional Research Service has determined that Senator Armstrong's beefed-up rescission proposal would be constitutional.⁵ Since there seems to be little difference in principle between Armstrong's rescission proposal and a line-item veto, the veto's constitutional critics need to marshal better evidence to support their case. Moreover, there is historical precedent for a presidential refusal to accept specific appropriations. Between 1921 and 1974, the President possessed unilateral and absolute impoundment powers; he could refuse to spend appropriations without any explanation to Congress. The 1974 Budget Control Act stripped the White House of such power.

Opponents also fear that the line-item veto would grant nearly unilateral authority to the President, because he could veto a program if he could hold the backing of just one-third of one chamber of Congress. But if the veto could be overridden by a congressional vote of only fifty percent, as Senator Mattingly's proposal provides, this objection might be overcome--since any program of truly national importance presumably could win majority support.

The general argument that a line-item veto would circumvent the intent of the Founding Fathers holds less weight when viewed in the context of the structural changes that have altered the institutional balance of power firmly in favor of Congress. Moreover, although the Constitution specifically limits the president's veto powers to entire bills, it is not exactly clear, according to some experts, what the Founding Fathers meant by a "bill." In early years "bills" were limited in their scope of authorizations and financing--it is unlikely that the Founding Fathers envisaged the passage of single bills with \$316 billion of spending authority (a tenth of the nation's entire output). As Senate Finance Committee Chairman Robert Dole (R-KS) noted in congressional debate during the Carter Administration, "the growth of the size of appropriations bills has eroded the intent of the original veto provision of our Constitution and I believe that erosion should be reversed."⁶

The balance of power has also shifted away from the President in the last ten years as the rules on germaneness have become largely ineffective.⁷ The Constitution did not intend for Congress

⁵ Letter from Raymond Celada, Congressional Research Service, to Senator William Armstrong, October 17, 1983.

⁶ Congressional Record, March 10, 1977, p. S7199.

⁷ The standing rules of the Senate provide that "no amendment which proposes general legislation shall be received to any general appropriations bill, nor shall any amendment not germane or relevant to the subject matter of the bill be received...." Congress typically ignores these rules in order to attach politically controversial amendments to critical appropriations bills.

to attach non-germane authorizing language to critical appropriations bills in order to pressure the President into accepting those special interest additions.

Moreover, while Congress has assumed more extensive budgetary powers, it has failed to assume the corresponding fiscal responsibilities. The line item veto proposal offers a means to effect such fiscal responsibility, and to restore the balance of power existing prior to 1974. It is not a revolutionary attempt to create an "imperial" presidency.

STATE EXPERIENCE

Forty-three state governors now have line-item veto power over appropriations. These states adopted the veto after the Civil War and none of the states subsequently has withdrawn it--clear evidence that the veto is both popular and workable.

California Governor George Deukmejian "popularized" the line-item veto in the media last summer when he "blue pencilled" \$1.2 billion in legislative requests to avoid tax increases. But Deukmejian has not been the only governor to flex his line-item muscles. In Illinois, Governor James Thompson routinely slices about 3 percent off appropriations bills each year to keep the budget balanced. And during his eight years in Sacramento, Ronald Reagan used the line-item veto to reduce the legislature's spending plan by an average of 2 percent a year.

Learning From the States

The simple fact that no line-item veto law has been repealed in any of the 43 states that enacted it is clear testimony to its success and acceptance. But state experience also suggests that some problems would need to be solved before a federal version of the veto would be successful.

The primary hurdle would be the ambiguity over the term "item." Opponents of the proposal contend that the vagueness surrounding the term would mean granting the President uncertain power. The issue could be a stumbling block in the line-item veto initiative. Litigation in the states has centered on the precise meaning of the term "item" and whether it would encompass reductions as well as disapprovals. Contradictory decisions have been handed down in different states; for instance, in Oklahoma and Illinois.⁹ A bill that specifies that the President must approve or reject an entire line appropriation, might lead to such questions as: Would individual projects within a military construction or mass transit appropriation be subject to line-item

⁹ See *State University v. Trapp*, 28 Okla. 31, 1911, and *People ex rel. State Bd. v. Brady*, 227 Ill. 124, 1917.

scrutiny, or would the President be confined to action only on major appropriation headings?

Senate Majority Leader Howard Baker (R-TN) is concerned that this confusion would allow Congress to manipulate the language of bills to avoid the line-item veto. Says Baker: "I am really afraid if we had line-item vetoes Congress would start sending the President appropriations bills with just one line."

Senator Mattingly's bill may deal with this problem by granting the President sweeping authority to reduce or disapprove any part of an appropriation. This would eliminate any ambiguities and potential court conflicts over presidential power, but it would also grant the President very extensive power over the federal pursestrings--and so is not likely to receive congressional approval in its present form. The senator has sought to balance this sweeping power, however. A recently introduced amended version of S. 1921 would allow Congress to override a line-item veto with a simple majority. It would also require the veto to be "reapproved" after two years.

CONCLUSION

The line-item veto faces considerable opposition from two groups within Congress. Legislators who wish to protect their ability to force acceptance of pork-barrel spending and non-germane authorizations have every reason to oppose the proposal. In addition, legislators who are concerned that critical defense systems could be the primary targets of future presidential vetoes understandably hesitate supporting the device.

Senator Dole has reminded the first group that they have clear obligations to the country. "I do not impugn those members of the Senate who support such (pork-barrel)," says the Finance Committee chairman, "because it is our duty to do as much as we can for our states. However as a group I believe that we could all endorse an institutional change which would eliminate some of this."

The fears of the second group, however, must be weighed carefully in assessing the full political costs and benefits of the line item veto. Moreover, critics of the line-item veto should remember that the Constitution was written in the context of one set of political parameters and institutional conditions and that those parameters and conditions have changed. The budgetary process can only achieve the purposes of the Constitution if it is adapted to these new circumstances. A legislated line-item veto could restore the balance of power originally intended by the Founding Fathers, without intruding on the clear intent of the Constitution.

Most concerns over the constitutionality of the line-item veto appear to be little more than political rhetoric. The

President enjoyed unilateral impoundment powers for over fifty years during this century.

Yet the line-item veto proposal is still wrought with practical problems. Conservatives, for instance, must ponder the fact that a liberal President could block certain weapons systems approved by Congress. And the best mechanism for introducing such a veto is by no means clear. State experience suggests that the least problematic method of instituting a line-item veto would be to accompany it with a statutory rule granting the President the right to disapprove or reduce any part of any appropriation bill. Such language would carry the principle of executive review to its logical conclusion. A rule of this kind could be achieved by amending existing rescission powers such that a rescission would stand unless Congress explicitly overrode it. In order to make such sweeping executive review palatable, and to reduce the danger of a President preempting spending priorities, it would be prudent to allow congressional override with less than a two-thirds vote.

A line-item veto would be no fiscal panacea. It does not even address the primary federal spending problem--the spiraling growth of entitlements. Nor would it deal with many of the serious shortcomings of the congressional budget process. But by taking the handcuffs off the President in the appropriations process, the line-item veto would constitute an important first step toward fiscal responsibility.

John Palffy
Policy Analyst

Senator HATCH. Let me ask two questions of both of you.

President Ford's letter spoke of the impoundment authority.

If the President's impoundment authority was restored, would we need a line-item veto, at all?

Professor Schultz?

Professor SCHULTZ. I do not think so.

Senator HATCH. You do not think we would need it?

Professor SCHULTZ. I do not think we would need the line-item veto. I think the impoundment alternative is a better alternative, because it is more certain, it is less likely to be used, but when it is used, it is more certain. Congress is very limited in its ability to override a Presidential decision to impound funds.

The fact that impoundment can only be implicit in the Constitution, I think would encourage the President not to use that tool unless it were absolutely necessary.

The line-item veto, on the other hand, especially in the form of Senator Dixon's proposal, makes no sense to me, in that if a majority has already voted to appropriate this money, why should they not vote to override a particular line-item veto? And then the President has the choice between line-item veto, or vetoing the entire legislation, and if he feels strongly enough, if he feels strongly enough about vetoing a particular line, and he feels it will be overridden by a majority, he will veto the entire bill, which does not take us out of the "dilemma" that Senator Dixon and others say that we are in, of stopping the entire Government.

Senator HATCH. Mr. Palffy?

Mr. PALFFY. Impoundment grants more unilateral control to the President than the line-item veto, especially under the bills proposed by Senators Mattingly and Dixon given that impoundment is a greater power, than the line-item veto. The latter would be unnecessary given the existence of the former.

Senator HATCH. We have had pointed out to us that the entitlements are not subject to line-item vetoes, and neither are appropriations from previous years. So if you add that up, there would

be very little percentage of the total budget that would be subject to line-item veto.

Do you agree with that statement, and do you think that the line-item veto is all that valid, under those circumstances?

We will start with you, Mr. Palfy.

Mr. PALFFY. As I stated, I think 40 percent of the budget would be subject to line-item veto.

Senator HATCH. Most of that would be under defense.

Mr. PALFFY. Right. Two-thirds of it. But, there is considerable room for progress in cutting spending in defense without cutting into operations of the President's procurement program. Nobody can disagree that some portions of the defense budget are pork barrel.

This is a dilemma that conservatives have to address—how much they want the defense budget—subject to the President's line-item veto.

Two dollars of defense spending is up against \$1 of nondefense discretionary spending but such pork barrel type spending is more likely to be vetoed, and more likely to be sustained by Congress because most defense spending is in the national interest, and would be restored if the line-item veto were subjected to a 50 percent majority.

So, yes, \$2 of defense spending is subject to line-item veto, but I do not think that this \$2 is at as great a risk as the \$1, and of non-defense spending and, so we can make some progress in reducing spending.

Senator HATCH. Professor Schultz?

Professor SCHULTZ. Yes, I think what I am struck by is—what I was struck by today, and what I have been struck by in the past, it is argued that we have this tremendous budgetary problem, fiscal problem, and it seems to me that line-item veto is meaningless. I mean, as admitted, most spending which is out of control is immune from the line-item veto.

So, yes, I have to agree with you, with the thrust of your question. I mean, it seems to me it is little more than public relations on the side of spending control via the item veto.

On the other side, it may be dangerous. Speaking to the military issue, you know, the common scenario I think people have of a line-item veto is that the President will sit there with a particular appropriations bill, and he will have his economists in, someone in to tell him which items are "pork," which items are not, and he will veto those.

Well, what about the scenario of single issue groups? It has been pointed out that this country, that the political dialog in this country is suffering because of the presence of single issue groups, and it would seem to me that a line-item veto would only strengthen those groups.

So I think I agree wholeheartedly with the thrust of those questions.

Senator HATCH. I appreciate the testimony of both of you. I am going to submit a number of questions in writing to you, and we would appreciate responses back, to build this record.

Senator HATCH. We appreciate having you here, and we appreciate the testimony that you have given, and I think that it has been very helpful to this committee.

Thank you so much.

With that, we will recess this committee until further notice.

[Whereupon, at 11:08 a.m., the subcommittee adjourned, subject to the call of the Chair.]

[The following was received for the record:]

APPENDIX

ADDITIONAL SUBMISSIONS FOR THE RECORD

AN ITEM VETO FOR THE PRESIDENT?

by

RUSSELL M. ROSS

Professor of Political Science

The University of Iowa

and

FRED SCHWENGEL

President

United States Capitol Historical Society*

An Abstract

It has been asserted that nothing is so powerful as an idea whose time has come. The item veto for the President of the United States is not a new idea but it well may be an idea whose time has finally arrived. With the federal budget exceeding six hundred billion dollars annually it is imperative that greater fiscal controls be exercised. One of the best methods of achieving fiscal responsibility may well be to grant the President of the United States this item veto authority.

Every President with one exception during the twentieth century that has expressed himself on the question has requested the item veto. In forty-three of the fifty states the chief executive has been granted such a fiscal tool. Many members of Congress have been on record as believing that it is a necessary part of the presidential power. Numerous scholars have testified to the desirability of the item veto. Seventy percent of the American citizens as reported by the latest Gallup survey on the subject likewise favor granting this authority to the nation's chief executive. The three principal arguments favoring the plan are: 1) it has worked successfully in the states, 2) it would help to reduce extravagance in public expenditures by curbing logrolling and pork barrel appropriations, and 3) it would restore the veto power to the office of the president.

One of the most frequently suggested amendments to the United States Constitution has been the proposal to grant the "item" veto authority to the President. This authority would grant to the chief executive the power to reject specific items within legislation passed by both Houses of Congress rather than presenting the President with the necessity of accepting the entire bill or vetoing it in its entirety.

The first proposal to alter this "all or nothing" situation was introduced by Representative James C. Faulkner of West Virginia in 1876. Since that date more than one hundred and forty proposals have been introduced to provide the President with an item veto of one form or another. Most of the proposals have limited the exercise of the power to appropriation bills without granting authority to reduce an item and would require a two-thirds vote of Congress to restore the deleted item.

Most authorities agree that the "item veto" is a constitutional question. A majority of the bills proposed have been in the form of a constitutional amendment. For example, during the Eighty-sixth Congress, twenty-four bills of this type were introduced. For nearly a century the pros and cons of the item veto authority have been before Congress and to a lesser degree in the minds of the general public. It must be admitted that while there have been sporadic spurts of interest in and support for the authority, there has not been a widespread, sustained and positive or active support for the proposal.

This problem has acquired a new degree of relevance and greater interest and support in a decade when the national budget

* Both authors have considerable public service experience. Professor Ross served as Executive Assistant to the Governor of Iowa (1960-61) and Chairman, Iowa State Campaign Disclosure Commission, (1974-76). Mr. Schwerdt served as a United States Congressman for eight terms.

has increased more than 600 billion and in a period when vast sums of unrequested money have been appropriated for functions and equipment opposed by the Administration and by many persons with more competence in the particular field in question than most Members of Congress. It has also been a decade in which Congress has not hesitated to appropriate funds for public works projects which failed to meet the minimum standards established by Congress itself for such projects. Former Senator Kenneth B. Keating of New York declared of the item veto authority that "no reform could reap greater benefits for individual taxpayers, and no single change in our governmental processes could save more money more wisely."

No authority in the government contends that the item veto authority is a panacea for all of the ills of the governmental system. In spite of what appears to be an obvious need for the item veto, Congress has paid scant attention to most of the more than one hundred and forty proposals that would vest this authority in the hands of the President of the United States.

Three broad approaches might be followed by Congress in granting this authority to the President: 1) an amendment to the Constitution, 2) an act of Congress, and 3) a change in the House and Senate rules. Authority could be granted to the President to delete items from any Act of Congress or merely to reduce separate items in appropriation bills only; a third alternative could be to allow the chief executive to reduce or delete an appropriation which had not been authorized by the relevant Congressional committee and/or the departments and agencies involved.

The veto power of the Executive in the United States began with the thirteen colonies when the governors were able to reject any measure passed by the legislature. In all except Maryland, Rhode Island and Connecticut the acts of the legislature also were subject to a royal veto. Whether exercised by the King or the colonial Governor, the veto was absolute. The Crown so abused the veto power that the first clause of the Declaration of Independence set

forth as one of the reasons for the separation of the colonies from England that, "The King has refused his assent to laws most wholesome and necessary for public good." So great was this abuse that the state governments which were formed after the outbreak of hostilities with England virtually eliminated the veto power of the governors. Only Massachusetts allowed the Governor even a qualified veto and not even that until 1780. The colonial experience with the mother country caused a fear of executive power. This fear was so overwhelming that there was not even so much as an executive commission established by the Articles of Confederation. It is true that the Articles granted, in effect, a veto power to the individual states which comprised the Confederation.

However wise this restriction of executive power may have been in light of prevailing conditions, by 1787 it was recognized by many persons that a change was necessary. The Constitutional Convention admitted, although rather reluctantly, that 1) a national executive was required, and 2) this executive should be provided with a veto power. Differences of opinion concerned the type of executive and the scope of power which should be granted.

After consideration of many widely varying proposals, it was finally determined that there should be a single executive, possessing a qualified or limited veto authority.¹ The term "qualified negative" rather than the term "veto" was used by the members of the Convention; the latter term was impolitic.²

The questions of conferring authority on the President to veto particular items was not even raised during the Constitutional Convention. This silence on the subject, however, is not surprising when one recalls the prevailing distrust for executive authority. It is at least possible that this subject was not raised because those attending the Convention gave the term "bill" a much narrower construction than has since been applied to the term. It may have been envisioned that a bill would be concerned with only one specific subject and that subject would be clearly stated in the title.

The following excerpts from a letter by the Honorable William B. Bankhead, Speaker of the House of Representatives, dated May 5, 1937, defends that point of view:

It is my opinion that the word "bill," which is the key word in the text, insofar as the instant question is concerned, should have a construction not more narrow than the separable items in the bill, I mean items which might have been the subject matter of separate bills. I do not hold this word may not be given even a more liberal construction, but I am willing to go as far as separable items without any further explorations. If I should find contrary decisions, etc., I would not be able to agree with them though I might be compelled to abide by them. I have no hesitancy in saying that the *purpose and plan* [emphasis added] of the Constitution would be carried out by the construction of which I have indicated, and that it is not carried out by the present construction. The present construction makes it necessary to veto an entire bill in order to give Congress the benefit of the President's objection to a single item in that bill. On the other hand, it compels the President to give official approval to an item which he does not approve in order to avoid vetoing the whole bill, some provisions of which he may consider very important.

The plan of the Constitution in its entire concern is that proposed legislation which has received congressional endorsement shall become law when the President shall examine and approve it; and if it be disapproved, the judgment of the Congress be taken again in the light of the President's objections, which judgment is to be expressed by a two-thirds vote of the Houses of Congress. It is a part of the plan that legislation which the Houses of Congress and the President, as a matter of fact, approve become law as soon as their minds meet and the formalities of the Constitution are complied with. Permitting official approval by the President of that which is agreed to and dis-

approval of that to which he objects would be in harmony with the plan and purpose of the applicable provision of the Constitution. Any construction of the word "bill" which compels the President officially to approve that which he does not approve in order to avoid striking down the whole bill, or, on the other hand, to strike down the whole bill in order to reach items he does not approve, is a construction contrary to this plan.

No accepted rule of constitutional construction makes it incumbent upon effectuating officers so to construe this word "bill" as to compel them to violate the clear purpose and plan of the Constitution. The "bill" to be returned with objections means not the entire number of separate legislative items assembled under one caption, but any of the assembled items under that caption which it is practical to isolate and make the object of Executive disapproval.³

Following the lead set by the Massachusetts Constitution and the Constitution of the United States, the several states, as they revised their constitutions in the following decades, generally granted a limited veto authority to their governors. However, it was not until the time of the Civil War that the principle of the *item veto* found expression in a constitution.

This authority was first provided for in the Provisional Constitution of the Confederacy. Article I, Section 5, of that document stated that, "The President may veto any appropriation or appropriations and approve any other appropriation or appropriations in the same bill." This authority was continued in the permanent Constitution of the Confederacy which stated in Article I, Section 7, that "The President may approve any appropriation and disapprove any other appropriation in the same bill. In such case he shall, in signing the bill, designate the appropriations disapproved, and shall return a copy of such appropriations with his objections to the house in which the bill originated and the same proceedings shall then be had as in case of other bills disapproved by the President."⁴

Robert H. Smith, who introduced the proposal to include the item veto authority in the Confederate Constitution, explained and presented an impressive argument for the measure to the people of Alabama in the following manner:

We have followed with almost literal fidelity the Constitution of the United States, and departed from its text only so far as experience had clearly proven that additional checks were required for the preservation of the Nation's interest. Of this character is the power given the President to arrest corrupt or illegitimate expenditures, and at the same time approving other parts of the bill. There is hardly a more flagrant abuse of its power, by the Congress of the United States than the habitual practice of loading bills, which are necessary for governmental operations with reprehensible, not to say venal dispositions of the public money, and which only obtain favor by a system of combinations among members interested in similar abuses upon the Treasury. [emphasis added]

Bills necessary for the support of the Government are loaded with items of the most exceptional character, and are thrown upon the President at the close of the Session, for his sanction, as the only alternative for keeping the Government in motion. Even, however, under this salutary check, the evil might be but mitigated, not cured, in the case of a weak or highly partisan President, who would feel that the responsibility of such legislation rested but lightly on him, so long as the unrestrained power and duty of originating appropriations depended upon a corrupt or pliant Congress—hence the conventions of Confederate States wisely determined that the Executive was the proper department to know and call for the moneys necessary for the support of Government, and that here the responsibility should rest.

The Chief Executive, head of the country, and his Cabinet should understand the pecuniary wants of the Confederacy, and should be answerable for an

economic administration of public affairs, and at the same time should be enabled and required to call for whatever sums may be wanted to accomplish the purposes of Government.

... by giving the President the power to veto objectionable items in appropriation bills, we have, I trust, greatly purified our Government.⁵

Smith's appeal is one of the first, and finest, published statements setting forth and explaining the reasons in support of the item veto authority for the Chief Executive. From this statement, it is apparent that this concept was introduced hand-in-hand with an attempt to establish fiscal responsibility centered in the Executive Department.

The spread of the item veto was spectacular among the states following the Civil War. Later it became a reality in the possessions as well, for Congress, when it enacted organic laws for the United States possessions, granted the authority to veto specific items in appropriations bills to the Governor-General of The Philippines (1916) and to the governors of the Territories of Hawaii (1900), Alaska (1912), Puerto Rico (1917) and the Virgin Islands (1954).⁶ Thus Congress recognized the need for and virtue of this authority which it has never given to the President of the United States and the American people.

President Andrew Johnson signed the Army Appropriation Bill of 1867, but in a message of protest to Congress he decried as out-of-place provisions depriving ten states of the right to maintain a militia. The practice of attaching riders became so prevalent by 1873 that President Grant recommended, in his message to Congress, an Amendment to the Constitution "to authorize the Executive to approve of so much of any measure passing the two Houses of Congress as his judgment may dictate, without approving the whole, the disapproved portion or portions to be subject to the same rules as now." This recommendation, limited to appropriation bills, was renewed by President Hayes and Arthur in 1879 and 1882, respectively. Hayes vetoed five appropri-

tion bills in 1879 alone because of objectionable provisions. Much later President Wilson vetoed several appropriation bills because of specific objections. This course is not an easy one to follow when rejection of an entire appropriation bill may impede the operation of an important facet of government.

The introduction and use of legislative "riders" attached to appropriation bills coupled with adoption of the item veto authority by many of the states caused agitation for inclusion of a similar provision in the Federal Constitution. The first proposal to amend the Constitution of the United States in order to give the item veto authority to the President was introduced in 1876 by Representative Faulkner; it was restricted to the deletion of items from appropriation bills. Since that time there has been an unending succession of proposals which have varied greatly in scope and detail. They have ranged from proposals limiting the item veto to power over rivers and harbors bills only, to others allowing the President to reduce as well as veto specific items in any appropriation bill.

The attachment of legislative "riders" to appropriation bills, is, perhaps, one of the most difficult problems which the item veto would do much to correct. Although the present rules of both Houses are aimed at preventing the inclusion of legislation in appropriation bills, through the suspension of the rules prohibiting points of order many changes in existing legislation and much new legislation have been brought into existence attached to appropriation bills.

Presidential Statements

At least six Presidents since the Civil War have explicitly expressed their support for an amendment to the Constitution to give the President the power to exercise some form of item veto. They are Grant, Hayes, Arthur, Franklin D. Roosevelt, Truman and Eisenhower. Even though President Taft did not favor the item veto, he recognized the coercive practice of Congress in attaching legislative riders to needed appropriation bills,

thus depriving the president of his constitutional power as to legislation.

In a message to Congress on August 14, 1876, President Grant claimed "discretionary authority" over the items of appropriation bills. In signing the river and harbor bill he said:

If it was obligatory upon the Executive to expend all the money appropriated by Congress, I should return the river and harbor bill with my objections. . . . Without enumerating, many appropriations are made for works of purely private or local interest, in no sense national. I cannot give my sanction to these, and will take care that during my term of office no public money shall be expended upon them Under no circumstances will I allow expenditure upon works not clearly national.⁸

No objection was made to the President's interpretation.⁹

The "discretionary authority" of which Grant spoke was the power to impound funds. This power, which is both a poor substitute for and very weak form of the item veto authority, has been used on a number of occasions by various Presidents. The impounding of funds might be termed a *de facto* item veto. Such action is not a satisfactory substitute for an explicit provision for this authority because in various ways Congress can force the President to expend appropriated funds.

Impoundment allows the executive to refuse to spend funds that have been appropriated by Congress. Refusals to spend have usually been used to effect savings or for managerial reasons. Prior to the use of this extraconstitutional power by Richard M. Nixon, impoundments were generally infrequent and temporary. What concerned Congress about Nixon's nearly 18 billion dollar impoundment actions was that impoundment was used to set policy and reorder the nation's priorities. Obviously Congress believed that it was one thing for the President to delay funds for purposes of efficiency but quite another thing for a President to engage in policymaking or priority setting by impoundment measures.

Congress complained that by refusing to spend appropriated money the executive was in effect exercising an item veto but was avoiding a public veto message and the risk of it being overridden by Congress.

Thus the Congress decided in 1974 to severely limit the use of impoundment by the President. Maine Democrat Senator Edmund S. Muskie in 1974 was one of the chief sponsors of the Congressional Budget and Impoundment Control Act, which was designed to encourage Congress to evaluate the nation's fiscal situation and program spending priorities in a comprehensive way.

The impoundment-control provisions of this law have not worked out as well as might have been expected as Congress has put the executive branch on the defensive. Presidents are obligated to report delays in spending to Congress where either house may veto presidential decisions to defer spending. It also requires that both houses approve a presidential request to eliminate a project that Congress has funded. If the General Accounting Office determines that the President has failed to report delays, Congress may act to force release of the funds. Furthermore, if a President fails to comply with congressional action overruling an impoundment, Congress may take the matter to court for an order requiring the funds be spent.

In *Train v. City of New York*, 420 U.S. 35 the U.S. Supreme Court denied that the administration had statutory authority to impound funds where the intent of Congress was to require the executive to spend funds. Even if Congress has used ambiguous or unclear language in the appropriation, the courts could find its intent. The court determined that the \$18 billion in water pollution control funds had been obligated by the administration under the procedures of the act, and therefore none of the funds could be withheld at a later stage through impoundments putting an end to deferral of \$9 billion.

It should be noted that in this case the Court did not rule on whether or not the president had any inherent constitutional

authority to make impoundments, restricting itself solely to the issue of statutory construction presented in the case.

President Hayes

In his book, *The Veto Power*, Edward Campbell Mason wrote:

President Hayes, after his struggle with Congress over the attaching of riders to appropriation bills, recommended that the executive be given the power to approve or veto the separate items of an appropriation bill. This recommendation was taken up and acted upon, and from that time to the present (1890) there has been a constant agitation for an increase of the range of the veto.¹⁰

President Arthur

After deprecating the practice of combining appropriations for a great diversity of objects, widely separated in their nature and locality, in one river and harbor bill, President Arthur, in his second annual message to Congress, dated December 4, 1882, suggested two solutions to this problem:

1. The enactment of separate appropriation bills for each internal improvement, or, alternatively,

2. A constitutional amendment empowering the Executive to veto items in appropriation bills.

He then listed fourteen states whose constitutions gave the item or specific veto authority to their governors and declared:

I commend to your careful consideration the question whether an amendment of the Federal Constitution in the particular indicated would not afford the best remedy for what is often a grave embarrassment both to members of Congress and the Executive, and is sometimes a serious public mischief.¹¹

President Arthur repeated this recommendation in his third annual message, dated December 4, 1883,¹² and in his fourth annual message, dated December 1, 1884.¹³

President Franklin D. Roosevelt

In his budget message for Fiscal Year 1939, President Roosevelt, after calling attention to the use of the item veto "in the majority of our States" and remarking that "the system meets with general approval in the many States which have adopted it," said:

A respectable difference of opinion exists as to whether a similar item veto power could be given to the President by legislation or whether a constitutional amendment would be necessary. I strongly recommend that the present Congress adopt whichever course it may deem to be the correct one.¹⁴

President Truman

In the second volume of his *Memoirs*, Harry S. Truman wrote:

One important lack in the presidential veto power, I believe, is authority to veto individual items in appropriation bills. The president must approve the bill in its entirety, or refuse to approve it, or let it become law without his approval As a senator I tried to discourage the practice of adding riders deliberately contrived to neutralize otherwise positive legislation, because it is a form of legislative blackmail. The honest way was to defeat legislation by voting against it rather than by adding crippling amendments to render it ineffective.¹⁵

President Eisenhower

In reply to a House request for recommendations on possible budget cuts, President Eisenhower addressed a letter to Speaker Rayburn, dated April 18, 1957, containing ten recommendations including the following one:

And, tenth, to help assure continuing economy on the part of the Congress as well as the executive branch, take action that will grant the President the power held by many state governors to veto specific items in appropriation bills.¹⁶

In his budget Message for Fiscal Year

1961, President Eisenhower again requested the item veto authority stating, "Many Presidents have recommended it, but the Congress has not yet granted the President of the United States that power. I again recommend it."¹⁷

President Taft

Taft is the lone dissenter. He is the only President who has expressed himself on the item veto who declared against the authority. Although he recognized, and deplored, the evils of legislative "riders," President Taft expressed his opposition to the item veto authority in these terms:

. . . I think the power to veto items in an appropriation bill might give too much power to the President over Congressmen. It is wise to leave the remedy . . . to the action of the people in condemning at the polls the party which becomes responsible for such riders than to give, in such a powerful instrument, a temptation to its sinister use by a President eager for continued political success.¹⁸

The twenty-second amendment to the Constitution limiting any President to two terms may have reduced somewhat the effectiveness of this argument.¹⁹ Further, the electoral process provides no real safeguard against the wasteful expenditure of funds, and in no way can it vitiate the effects of prior wasteful expenditures. The most that the electoral process permits, in this instance, is a reaction against unsound fiscal practices.

Three Presidents, Buchanan, Benjamin Harrison and Cleveland, expressed their opposition to certain legislative practices (attachment of legislative "riders" to appropriation bills and inclusion of objectionable appropriations including "pork barrel" measures) in bills appropriating funds for needed or vital projects or functions in such strong words and using such terms that their statements may be regarded as implicit appeals for the item veto authority.²⁰

The support for a constitutional amendment providing for the item veto authority is not limited to presidents. The

list of supporters including constitutional experts, political scientists, economists, and Senators and Representatives is long and impressive.

Congressional support for the item veto authority is found in both political parties; it is found all along the political spectrum from conservative to liberal. The diversity of Congressional support is discernible from this partial list of members and former members of Congress who have expressed themselves in favor of a presidential item veto: Arthur H. Vandenberg, Hubert H. Humphrey, Emanuel Celler, Kenneth B. Keating, Harry F. Byrd, J. Strom Thurmond, William Proxmire, Carl Curtis, Prescott Bush, Frank Carlson, Alben W. Barkley and Everett Dirksen. A complete list of Congressional supporters would be several pages long.

The Hoover Commission implicitly called for the item veto authority in Recommendation No. 4, "Reduction of appropriations." The Commission espoused the "right of Bureau of the Budget and President to reduce appropriated amounts during the year for which they were provided. . . ."²¹

The Senate Committee on Rules and Administration, to which was referred the resolution to consolidate all general appropriation bills into one consolidated general appropriation bill, reported favorably on granting the item veto authority to the President.²²

Non-governmental support for some kind of item veto authority includes such political scientists as Clifton Rossiter,²³ Sidney Hyman,²⁴ and Louis Brownlow,²⁵ such economists as Arthur Smithies²⁶ and J. Wilner Sundelson.²⁷ The League of Women Voters has supported and worked toward a presidential item veto authority since 1954. The League's position is based on the findings of a comprehensive two-year study of the Congressional budgetary process.²⁸ Other public support comes from the National Association of Manufacturers,²⁹ the Chamber of Commerce of the United States,³⁰ and the Urban Farm Bureau Federation.³¹

A Gallup Poll survey conducted on this

subject in September, 1953, asked, "At present, when Congress passes a bill to spend money, the President cannot approve just parts of that bill, but must approve it in full or turn it down in full. Should this be changed so that he can turn down some parts of the bill without turning down the entire bill?" The survey indicated that 63 percent of the persons interviewed favored a change in the present veto provisions, while 24 percent were against any change, with the other 13 percent expressing no opinion. The non-partisan nature of this issue was reflected by the fact that Democrats and Republicans virtually saw eye-to-eye on the question.³²

A similar survey was conducted in July, 1957. The same question was asked. The results were: 60 percent in favor of a change in the veto provisions, 26 percent opposed any such change, and 14 percent expressed no opinion. This survey indicated stronger political overtones than had the previous one. Republicans polled in the sample supported the proposed reform by a considerably larger majority than did Democrats.³³ (A possible reason for this is that President Eisenhower had just called for Congress to grant him this authority and that Eisenhower's Secretary of the Treasury and his Budget Director has just appeared before a Congressional committee in behalf of such legislation. Thus, the item veto may have momentarily taken on a Republican coloration.)

The most recent Gallup survey conducted on this subject in 1979 showed that a record seven in ten (70 percent) in favor of giving a President the power permitting him to veto specific items in bills passed by Congress. Support for giving the President item veto is found among all major population segments. Solid majorities of both Democrats and Republicans favor the change.

The number of members or former members of Congress who have explicitly stated their opposition to this authority is limited. Only four members or former members are listed as opponents. They are the Honorable Fontaine M. Marverich of Texas, the Honorable Clarence Cannon of Missouri, the Honorable John

Taber of New York and the Honorable Paul H. Douglas of Illinois. Undoubtedly other members are hostile to this proposed presidential authority; however, they have not specifically stated this hostility or opposition.

Congressional Action

Most of the many item veto proposals have not been reported out of committee. Of the few that have been reported, only one was reported favorably. Furthermore, only one item veto proposal has ever been submitted to a vote in either House and this vote was not actually on the subject of the item veto. The vote, in 1883, was on a motion to suspend the rules so that the Committee on the Judiciary of the House might be discharged and a specific bill voted upon; the motion was defeated because the necessary two-thirds majority could not be mustered. In the one instance when a bill was favorably reported out of committee, the resolution was never voted upon but merely passed over.¹⁴

Recent years have seen an increase in the number of item veto proposals which have been introduced and a comparative increase in the amount of committee attention given to these proposals. A subcommittee of the Senate Judiciary Committee held hearings in 1954. Subcommittees of the House Judiciary Committee held hearings in 1953 and 1957. In addition, the item veto authority has been discussed during hearings on the consolidated appropriations process. The Senate Committee on Rules and Administration, in its report on the consolidated general appropriations bills, reported favorably on the presidential item veto authority.¹⁵

In 1951 Congress, in effect, provided the Executive with an item veto authority. The General Appropriation Act of that year included a legislative provision directing that the appropriations otherwise made in that Act must be reduced by the sum of \$550,000,000 through the apportionment procedure administered by the Director of the Bureau of the Budget. In complying with this directive of the Congress, the Director of the Bureau of the Budget had the discretionary duty of de-

termining where, and in what amounts, the appropriations were to be cut to meet this specified overall reduction. Commenting on this authority the Budget Director, F. J. Lawton, remarked: "In exercising this discretion, it seemed equitable to treat certain categories in a unison manner. As a result, one appropriation was eliminated in its entirety. This was an item veto, but it was exercised by the Director of the Bureau of the Budget, a member of the President's staff."¹⁶ To reverse this action of the Budget Director would have required the introduction of a new appropriation bill, its passage by Congress and its approval by the President. Thus, this grant of discretionary authority to the Director of the Bureau of the Budget by the Congress was more far-reaching than would be the granting of the item veto authority to the President because all item veto proposals provide for Congressional reconsideration in the usual manner of such Presidential action.

Arguments advanced in favor of a provision permitting the President to veto separate items or provisions of appropriation bills include the following: (1) the item veto has worked successfully in the states; (2) it would help to reduce extravagance in public expenditures by curbing the effectiveness of "log-rolling" and discouraging "pork-barrel" appropriations; and (3) it would restore the veto power to the President.

1. *The item veto has worked successfully in the states.*

The forty-three states which grant the item veto authority to their chief executives have been the proving ground for the item veto authority (many for almost a century). It is significant to note that in no state where the item veto authority has once been conferred upon the governor has it subsequently been withdrawn. Almost without exception the comments by responsible government officials, including governors, on its exercise in the various states have been favorable. The virtues of this authority are that it provides a means for checking unnecessary or unsound expenditures, for preventing "pork-barrel" appropriations, and for deleting legislative "riders." Close study re-

veals that the governors have used this authority with judgment and discretion.

The results of the experiment in state governments with the item veto authority give significant testimony to the value and workability of this power for the chief executive.

The item veto authority would be infinitely more valuable in the hands of the President because of the greater need experienced on the national level. Officials of the Bureau of the Budget presented this argument:

First, the appropriations items in Federal bills are much larger than those in State bills, so that a President would be much more reluctant than a Governor to veto an entire appropriation item.

Second, it is customary practice in the States to add to the governor's budget by inserting separate, new appropriation items, while in the Federal Government the President's budget is more frequently increased by simply adding an additional amount to an appropriation already contained in the President's budget.³¹

The amount involved in a single appropriation item for the administrative expenses of one large Federal agency for one year may be greater than the total amount appropriated for a state for a similar period.

Most state appropriation acts contain literally hundreds of small items of appropriation, each of which can be eliminated where the item veto authority exists. The tendency in the states is to add other items, which constitute separate appropriations and which can be vetoed singly. However, in the Federal Government it is rare that Congress adds a separate item of appropriation; rather, the normal practice is to increase the amount of an appropriation instead of adding a new appropriation. The increase may not even require any change in the language of the bill.³² This type of situation—increasing the amount of an appropriation rather than adding a new item—coupled with the practice of lumping the expenditures for a number of functions into one appropria-

tion suggests the need for an item veto authority which permits the President to reduce, as well as to delete, specific appropriation items.

2. *The item veto would help to reduce extravagance in public expenditures by curbing the effectiveness of "logrolling" and discouraging "pork-barrel" appropriations.*

"Logrolling" and "pork-barrelling" are two of the most notorious practices engaged in by Members of Congress in an effort to obtain public funds for projects in their districts or constituencies. In many cases, a Congressman unfortunately thinks that his chances for re-election depend, in part, on the amount of public money which he is able to secure for his district. This need may not be, and usually is not, as overt as suggested here. Nevertheless, it is a real fear. These circumstances lead to a situation of "You vote for my appropriation and I'll vote for yours." Also, it leads to another, more sinister, practice—the threat of withholding support for a needed expenditure unless support is given to an unneeded, pet project. "If you don't vote for digging out Catfish Creek and pumping water into it so as to make it navigable, I'll oppose your item for making the Great River deep enough for warships to get to and from the Navy yard."

This situation presents the President with a difficult, if not impossible choice: veto the entire measure or accept the entire measure. If he vetoes the measure, he vetoes funds for necessary functions and needed projects, for traditionally, "pork-barrel" legislation is included in an act appropriating funds for important or vital functions and projects. If he accepts the appropriations bill, he accepts unnecessary and wasteful items not in the national interest as well as the needed appropriations.

It may be argued that the President can veto a bill which includes too many "pork-barrel" features and that another appropriation act embodying the necessary or vital functions and services will be passed. In practice, things do not work that way. Unfortunately, appropriation bills are not, as a general rule, passed until near

the end of a legislative session, perhaps not until the closing hours of a session. Under these circumstances the President does not have an effective choice. Should he veto a bill under these conditions, important projects may be held up and vital functions terminated until the next session of the Congress. The item veto would allow the president to slow up the progress of unnecessary items; if not completely eliminate them, and still approve those items which are of merit and prime importance.

The practice of "logrolling" with projects which do not meet cost-benefit ratios or cannot otherwise be justified is an unfair parliamentary technique which Congress can use to get legislation past the President. The practice has resulted in the appropriation of large sums of money for projects which would have no chance of being passed if considered separately and on their own merit. This technique, which facilitates unconscionable waste, should not be, and was not intended to be, within the power of Congress.

There are at least two problems concerning the use of the item veto authority to thwart these practices.

The first problem is the possibility that Congress might shift responsibility for fiscal responsibility to the President. It might prove tempting for the Members of Congress to authorize and appropriate funds for every locally-desired project in an effort to please constituents, at the same time knowing that the President would delete these items and thus prevent economic disaster. Blame for the failure of unnecessary local projects to receive an appropriation would be shifted to the President; the members of Congress nevertheless would be in a position to benefit from their irresponsible, even though unsuccessful, efforts. This situation is a distinct possibility and there does not seem to be argument with which to refute it. However, this situation need not develop, and whether or not it does is solely dependent upon a Congressional sense of responsibility.

The second problem is broader and inclusive of several points; it concerns the

scope, meaning and effect of a Presidential item veto authority.

Allowing the President to reject appropriation items for authorized projects and functions, some critics of a Presidential item veto believe, gives the President a legislative authority. Typical of areas in which this problem would be important are those of public power and welfare. The deletion of an item appropriating funds for operation or construction of a power plant by an anti-public power President might be considered a legislative act. The same would be true of such action in the welfare field. Of course, the veto *could be overridden* by the Congress. However, in practice it is admittedly not that easy.³⁹ In few cases is Congress able to override the Presidential veto even of an appropriation bill. This is because a two-thirds vote is required to override a veto while only a simple majority is necessary to enact a piece of legislation. Critics of item veto argue that if the President were to have authority to reject separate items within an appropriations bill, it might be very difficult to override the veto, particularly if it were an extremely controversial or a party-line matter.

However, this problem would not be as great as it might at first appear. There seems to be little if any reason to believe that a President would act so unwisely as to delete the appropriation for a recognizedly vital project or function. Further, should a President act so unwisely, the Congress almost certainly would override the veto. If a vetoed item is not repassed, it can be assumed the appropriation was not for a vital or an indispensable function.

Another side of this same problem concerns the possible item veto of a legislative "rider" attached to an appropriation bill and the meaning and effect of such a veto. Although there are rules in both houses of Congress against attaching "riders" to appropriation bills, it is done on some occasions. Congress could attach a rider to an appropriations bill stating that "No funds herein appropriated shall be used for the construction of the Volta Dam." The rider contains a foreign policy statement as well as a Congressional prohibition upon the

executive. If the president had authority to veto this item, he would not only be determining public policy (and in the area of foreign affairs he should determine it), but, in effect, he would be performing a type of legislative act, i.e., authorizing such an expenditure.⁴⁰ Eliminating such a problem can be dealt with in two ways: (1) Congress could regard as binding the House and Senate rules prohibiting the attachment of legislative riders to appropriation bills; and (2) any provision granting the item veto authority to the President ought to state the scope of that authority and, to cover the contingency of usurped powers, it would have to limit the scope to appropriation items within appropriation bills early enough in the legislative session so that specific appropriation items deleted by a Presidential item veto could be reconsidered by the Congress. Whether or not the item veto authority is granted to the President, earlier Congressional consideration of appropriations is a much needed improvement in procedural practices. It is possible that if the item veto authority were granted to the President, this change in appropriation procedure would come about in an effort to prevent any "give away" or power over appropriation matters, so or usurpation of power by, the President. However, it is unlikely that provision of the item veto authority will bring about earlier action on appropriations; at least it has not done so on the state level.

3. *The item veto would restore the veto power to the President.*

Despite constitutional provision implying that the President shall be free to give effect to "his independent judgment upon the merits of each bill which comes before him for approval, the President, in fact, has little or no choice. Appropriation bills almost invariably are composed of items necessary for the public welfare as well as items not necessarily in the national interest. The President may "choose" to accept the bill in its entirety thus approving the undesirable and unnecessary items and the wasteful expenditure of funds, and assenting to any attached legislative "riders," or he may reject the bill in its en-

tirety thus risking delay if not discontinuance of necessary functions and work on needed projects. When appropriation bills are rushed through Congress in the closing days, and perhaps hours, of the legislative session, as is often the case, the President has, for all practical purposes, no choice at all. Yet it is under the stress of these conditions that some of the most objectionable features can be and are attached to appropriation bills.⁴¹ Granting the President the item veto authority would allow him to reject unnecessary and wasteful appropriation items, and perhaps legislative "riders," without at the same time having to reject needed expenditures, thus endangering the public welfare.⁴² Thus this provision for the item veto authority would restore the effectiveness of the President's veto power.

In restoring the President's full veto authority, which seemingly can be achieved only by granting him the item veto authority, *the constitutionally-provided system of checks and balances would be re-established.* The Congressional practices of lumping together into one measure appropriations for many unrelated functions and projects, attaching legislative riders to appropriation bills, and considering appropriation bills near the end of the legislative session have tended to negate the system of checks and balances which is a basic principle of our system of government. Some opponents of the move to grant the item veto authority to the President argue that this authority would upset the system of checks and balances by giving increased power to the President and by substantially reducing the coercive power of Congress.⁴³ Actually, the item veto authority would, in large measure, do little more than restore to the President his rightful power and take from Congress powers which it has usurped for itself.

Notes

1. See Article II of the Constitution of the United States for a description of the office of Chief Executive.
2. Hearings before the Committee on Rules and Administration and its Subcommittee on Rules, United States Senate, 83rd Congress, 1st Ses-

- sion, on S. Con. Res. 8, p. 58. This document contains a brief, factual account of the consideration of the veto power by the Constitutional Convention.
3. *Congressional Record*, February 27, 1942, Vol. 88, Part 2, pp. 1759-60.
 4. Jefferson Davis, the only President of the Confederate States of America, never exercised this authority. The Provisional Constitution did not specifically provide a means for overriding an item veto. General vetoes could be overridden by a two-thirds vote of the Congress. It is implied that an item veto could be overridden in the same manner as general vetoes. The Permanent Constitution stated that an item veto could be overridden in the same manner as a general veto; this was by a two-thirds vote of the Congress.
 5. Robert H. Smith, *Address to the Citizens of Alabama on the Constitution and Laws of the Confederate States of America* on March 30, 1861.
Smith (March 21, 1813-March 13, 1878) was a lawyer and member of the provisional Congress of the Confederacy. Although an opponent of the secession movement, he loyally accepted the decision when it was made and served the Confederacy in several capacities. His service as a member of the committee of the provisional Congress which drafted the permanent constitution of the Confederate States of America is most noteworthy. The clear and forceful style which he developed as a lawyer, he applied to his task of constitution drafter. The clarity and simplicity of the Confederate constitution is in large measure a result of his diligent labors. Smith's commentary on the Confederate constitution is the finest and most explicit available.
- | Territories,
Possession, Etc. | | Source |
|----------------------------------|---|--------|
| Alaska | 37 Stat. 516, 48 U. S. C. 86 (1912) | |
| Hawaii | 31 Stat. 149, 48 U. S. C. 581 (1900) | |
| Guam | 64 Stat. 389, 48 U. S. C. 1423 (i) (1950) | |
| Philippine Islands | 29 Stat. 551 (1916) | |
| Puerto Rico | 39 Stat. 960 (1917) | |
| Virgin Islands | 68 Stat. 501, 48 U. S. C. 1575 (1954) | |
7. Richardson, *Messages and Papers of the Presidents*, Vol. VIII, p. 2529.
 8. *Ibid.*, p. 4331.
 9. Edward Campbell Mason, *The Veto Power: Its Origin, Development and Function in the Government of the United States, 1789-1889*, Harvard Historical Monograph No. 1 (Boston: Ginn and Company, 1900), p. 104.
 10. *Ibid.*, p. 137. A footnote to this statement gives the following years in which resolutions were offered: 1876, 1879, 1882 (4), 1883 (9), 1889, 1895, 1896 (4), 1888 (3).
 11. Richardson, *op. cit.*, Vol. VIII, pp. 439.
 12. *Ibid.*, p. 187.
 13. *Ibid.*, p. 253.

14. *The New York Times*, January 6, 1938, p. 12.
15. Harry S. Truman, *Memoirs*, Vol. II, p. 480.
16. *Congressional Record*, April 18, 1957, pp. 5395-97. Also see: H. Doc. No. 155, Eighty-fifth Congress, First Session. Eisenhower again requested this authority on May 24, 1957, in a telephone address to a Republican regional conference being held at Trenton, New Jersey. (See: Edward S. Corwin, *The President: Office and Powers*, (New York: New York University Press, 1957), Fourth Revised Edition, p. 475; also see: *The New York Times*, May 25, 1957.)
17. Budget Message of the President, the Budget of the United States Government for the Fiscal Year Ending June 30, 1961, p. M75.
18. W. H. Taft, *The Presidency, Its Duties, Its Powers, Its Opportunities and Its Limitations*, three lectures given at the University of Virginia (New York: Charles Scribner's Sons, 1915), p. 20.
19. However, the controversy generated by President Kennedy's request for standby authority to reduce the Federal Income Tax indicated that this type of argument is still existent and had rather wide prevalence.
20. Buchanan, in his first annual message to Congress renounced against the coercion imposed on the Executive. He said:

... practice has grown up of late years to legislate in appropriation bills at the last hours of the session on new and important subjects. This practice constrains the President either to suffer measures to become laws, which he does not approve or to incur the risk of stopping the wheels of Government by vetoing an appropriation bill. (Richardson, *op. cit.*, Vol. V., p. 462)

In 1892, President Harrison indicated that he had signed the Indian appropriation bill of 1891, carrying an objectionable item for \$3 million, under duress.

If this section had been submitted to me as a separate measure, especially during the closing hours of the session, I should have disapproved it; but as the Congress was then in its last hours and disapproval of the general Indian appropriation bill, of which it was a part, would have resulted in consequences so far-reaching and disastrous that I felt it my duty to approve the bill. ("Item Veto," Hearing before Subcommittee No. 3 of the Committee on the Judiciary, House of Representatives, Eighty-fifth Congress, First Session, on H. J. Res. 47, H. J. Res. 239, H. J. Res. 245, H. J. Res. 284, H. J. Res. 343, H. R. 830, H. R. 7405, and H. R. 7679, bills to authorize the President to disapprove items in general appropriation bills, May 27, 1957, p. 69.)

President Cleveland expressed his dissatisfaction with "cork-barrel" appropriations:

Appropriation bills for the support of the Government are defaced by items and provisions to meet private ends, and are freely asserted by responsible and experienced parties

that a bill appropriating money for public internal improvement would fail to meet with favor unless it contained items more for local and private advantage than for public benefit. (*Ibid.*)

21. "Progress on Hoover Commission Recommendations," Senate Report No. 1158, Eighty-first Congress, First Session, p. 143.
22. Senate Report No. 616, Eighty-first Congress, First Session, p. 5.
23. Clinton Rossiter, *The American Presidency* (New York: Harcourt, Brace and Company, 1956), pp. 157-158.
24. Sidney Hyman, *The American President* (New York: Harper & Brothers, 1954), p. 332.
25. Louis Brownlow, *The President and the Presidency* (Chicago: Public Administration Service, 1949), pp. 118-119.
26. Arthur Smithies, *The Budgetary Process in the United States* (New York: McGraw-Hill Book Co., Inc., 1955), p. 190.
27. J. Wilner Sundelson, *Budgetary Methods in National and State Government* (Albany: J. B. Lyon Company, 1938), p. 491.
28. Letter from Mrs. Francis P. Douglas, Congressional Secretary, League of Women Voters of the United States, to the Honorable Fred Schwengler, dated March 9, 1962. Also see: League of Women Voters of the United States press release entitled, "Statement of the League of Women Voters of the United States before the House Judiciary Committee in Support of the Item Veto," dated May 27, 1957.
29. Government Economy Committee of the National Association of Manufacturers, press release, dated June 10, 1957.
30. Letter from Mr. William E. Murtha, Director, Government Operations and Expenditures Program, Chamber of Commerce of the United States, dated April 9, 1962.
31. A letter from Mr. J. B. Thayne, Assistant Legislative Director, American Farm Bureau Federation, dated April 15, 1962.

	Should Change	Should Not	No Opinion
32. Democrats	63%	23%	14%
Republicans	64%	23%	13%
Independents	65%	23%	12%

(Taken from: The Washington Post, September 25, 1953, p. 10.)

	Should Change	Should Not	No Opinion
33. Democrats	56%	30%	14%
Republicans	68%	29%	12%
Independents	60%	29%	11%

(Taken from: Public Opinion News Service, July 17, 1957.)

34. This incident occurred in 1884. The Senate Judiciary Committee favorably reported out this resolution.
35. Senate Report No. 616, Eighty-first Congress, First Session, p. 5.
36. "Staff Analysis prepared by the Bureau of the Budget of Questions Raised by Honorable Charles E. Bennett, Member of Congress, Concerning the Item Veto Proposals," p. 1.
37. *Ibid.*, p. 3.
38. "A specific example of this practice is found in the appropriation to the Veterans Administration for hospital and domiciliary services for the fiscal year 1955. The Budget estimate of \$39 million was included without change in the bill as passed by the House. The Senate increased the amount by \$8 million, without changing the language of the item, but indicated the purpose of the increase by a statement in the report of its committee on appropriations. . . ." (Bureau of Budget Staff Analysis, p. 4.)
39. This point is graphically illustrated by the fact that only ninety-two Presidential vetoes were overridden from 1787 to 1980.
40. This argument assumes the existence of non-earmarked funds or unexpended funds. These are not unlikely circumstances.
41. "Item Veto. . . ." Statement of the U.S. Chamber of Commerce.
42. Whether or not the President had authority to veto legislative riders would depend on the scope of the item veto authority, in the absence of a statement granting him authority to veto non-appropriation items in appropriation bills, the scope of his veto power would depend on court rulings.
43. These individuals argue that the only power which Congress now has over the President, apart from the very extreme one of impeachment, is that of compelling him to give his assent to certain legislative measures. When the measures which are forced on the President are items which could not stand on their own merit, this argument becomes despicable.

THE PROPRIETY OF THE NEGATIVE -- THE GOVERNOR'S PARTIAL VETO AUTHORITY

ARTHUR J. HARRINGTON*

The propensity of the legislative department to intrude upon the rights, and to absorb the powers, of the other departments, has been already more than once suggested; the insufficiency of a mere parchment delineation of the boundaries of each, has also been remarked upon; and the necessity of furnishing each with constitutional arms, for its own defense, has been inferred and proved. From these clear and indubitable principles, results the propriety of a negative, either absolute or qualified, in the executive upon the acts of the legislative branch.¹

— Alexander Hamilton

On February 3, 1976, the Wisconsin Supreme Court decided *State ex rel. Sundby v. Adamany*² and reaffirmed the broad authority of the governor to object to parts of appropriation bills under the Wisconsin Constitution.³ The court's opinion in *Sundby* is important not only as an illustration of the extent of the executive's veto authority under the Wisconsin Constitution, but also for the court's promulgation of an objective test to determine the constitutionality of the exercise of that authority. Under this objective test, it is clear that the Wisconsin governor may object to parts of an appropriation bill if the remaining parts "constitute a complete workable law."⁴ The court's analysis in *Sundby* is significant in that it may serve to influence state courts which construe constitutional veto provisions similar to Wisconsin's to adopt the objective test. This objective test in *Sundby* is an attractive alternative to the subjective test formulated in many other jurisdictions.

The governor's authority to veto particular bills of the legislature is based upon sound principles of constitutional law. A

* B.A. 1972, University of Wisconsin-Madison; J.D. 1975, University of Wisconsin-Madison; associated with the law firm of Charney, Glusker, Teban, Clancy & Taitelman, S.C.; member of the American, Wisconsin, Milwaukee and Milwaukee Junior Bar Associations.

1. THE FEDERALIST No. 73 (A. Hamilton).

2. 71 Wis. 2d 118, 237 N.W.2d 90 (1975).

3. Wis. CONST. art. V, § 10.

thorough understanding of these constitutional principles will underscore the significance of the court's analysis in *Sundby*. In addition, a comparison of the development of the governor's veto authority in other jurisdictions is useful as an illustration of the broad authority afforded the governor by the provisions of the Wisconsin Constitution. This broad authority embodied in the provisions of the Wisconsin Constitution is a result of an unswerving line of judicial precedent in Wisconsin, culminating in the court's opinion in *Sundby*, which has expanded the governor's veto authority in Wisconsin.

I. EXECUTIVE'S VETO AUTHORITY — A CONSTITUTIONAL PRINCIPLE

The development of the executive veto in the federal experiment was an outgrowth of the colonial experience in America.⁴ The colonization of America by the English was accompanied by the imposition of the veto authority into the mainstream of government in two respects. First, the king retained the authority to repeal legislation enacted by the colonies. Second, each colonial governor was imbued with authority to veto legislation passed by the colony's representative assembly.⁵ The disputes that resulted over the exercise of the king's repealing authority and the colonial governors' veto authority were a constant source of irritation. It was this dispute which provided an impetus to the American Revolution.

As a result of the colonies' disenchantment with the veto authority under the rule of the English, it is not surprising that the majority of the thirteen original states did not afford the governors with any substantial control over the legislatures when the first Federal Convention was convened in 1787.⁶ Most state constitutions did not provide the governor with the power to veto legislation.⁷ New York was the first state to reach a compromise between a faction which was opposed to the exer-

4. The veto power of the king over legislation passed by the Parliament was the source of much irritation in English history. The exercise of this royal authority was one of the powers contested by the Long Parliament in 1642. In that year, the Long Parliament asserted the authority to enact legislation without the approval of the king. It was this source of agitation that led Charles II, subsequent to his restoration to the throne, to declare that all prior law enacted by the Commonwealth was null and void. LUCE, *LEGISLATIVE PROBLEMS* 140-41 (1935).

5. *Id.* at 141.

6. *Id.* at 151-52.

7. *Id.* at 145.

cise of the executive's veto authority and the pragmatists who argued that such a power was necessary for an effective check on the exercise of uncontrolled authority by the legislature. New York delegated the veto authority to a council which was comprised of representatives from the executive and judicial branches.⁸

An early example of the veto power placed exclusively in the confines of the executive branch was the Massachusetts model.⁹ This model found a strong spokesperson in Alexander Hamilton in *Federalist No. 73*.¹⁰ Hamilton expressed an overriding concern for the tendency of the legislature to encroach upon the powers of the executive branch in the absence of an effective check.¹¹ In addition, Hamilton viewed the executive

8. The New York Constitution as drafted by John Jay in 1777 created a Council of Revision which consisted of a governor, the judges of the Supreme Court, and the Chancellor. Bills passed by the New York legislature were submitted to this council. If the council returned a bill within ten days of passage, two-thirds of the legislature was required to approve the bill in order for it to become a law in the State of New York. *Id.* at 145.

9. The first proposal for a constitution in Massachusetts was rejected by the populace in that state in 1778 since the governor was a mere figurehead without effective veto authority. In the 1778 proposal, the governor and lieutenant governor of the State of Massachusetts were provided the same votes for legislation as other members of the state senate. In 1780, the Massachusetts' populace approved the proposed constitution which endowed the executive with the exclusive veto power similar to contemporary provisions in most state constitutions. *Id.* at 149.

10. THE FEDERALIST No. 73, at 340 (Howell ed. 1852) (A. Hamilton) states as follows:

I have in another place remarked, that the convention in the formation of this part of their plan, had departed from the model of the constitution of this state [New York], in favor of that of Massachusetts. Two strong reasons may be imagined for this preference; that the judges who are to be the interpreters of the law, might receive an improper bias, from having given a previous opinion in their revisionary capacity; the other, that by being often associated with the execution, they might be induced to embark too far in the political views of that magistrate, and thus a dangerous combination might by degrees be cemented between the executive and judiciary departments. It is impossible to keep the judges too distant from every other avocation than that of expounding the laws. It is peculiarly dangerous to place them in a situation to be either corrupted or influenced by the executive.

11. The propensity of the legislative department to intrude upon the rights, and to absorb the powers, of the other departments, has been already more than once suggested; the insufficiency of a mere parchment delineation of the boundaries of each, has also been remarked upon, and the necessity of furnishing each with constitutional arms for its own defense, has been inferred and proved. From these clear and indubitable principles, results the propriety of a negative, either absolute or qualified, in the executive, upon the acts of the legislative branches. Without the one or the other, the former would be absolutely unable to defend himself against the depredations of the latter. He might gradually be stripped

veto authority as a mechanism to insulate the populace from the enactment of expedient legislation by the popular assembly.¹² It is these basic philosophies which underlie the grant of veto authority to the President in the United States Constitution¹³ and to various executives in their respective state constitutions.

II. VETO AUTHORITY IN OTHER JURISDICTIONS

There is great variation in the executive veto provisions contained in state constitutions. Consequently, one should be cautioned against making any generalizations based upon decisions in one jurisdiction in interpreting constitutional provisions involving the governor's veto authority in another jurisdiction.¹⁴ However, a survey of decisions in other jurisdictions

of his authorities by successive resolutions, or annihilated by a single vote. And in the one mode or the other, the legislative and executive powers might speedily come to be blended in the same hands. If even no propensity had ever discovered itself in the legislative body, to invade the rights of the executive, the rules of just reasoning and theoretic propriety would of themselves teach us, that the one ought not to be left at the mercy of the other, but ought to possess a constitutional and effectual power of self defense.

Id. at 337.

12. But the power in question has a further use. It not only serves as a shield to the executive, but it furnishes an additional security against the enactment of improper laws. It establishes a salutary check upon the legislative body, calculated to guard the community against the effects of faction, precipitance, or of any impulse unfriendly to the public good, which may happen to influence a majority of that body.

Id. at 337.

13. U.S. CONST. art. I, § 7, provides in relevant part as follows:

Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law.

14. Similarity of language in various state constitutions does not provide a valid basis for applying case law in one state as an aid in construing the provisions contained in another state constitution. The scope of executive veto authority is a constitutional principle which depends on a host of factors not limited to the appearance of similar language in one state constitution. The Supreme Court of Arizona expressed concern for relying on case law from other jurisdictions for the purpose of construing similar language appearing in another state's constitution:

[T]here are but few decisions on such constitutional provisions, and among these we find considerable difference, both in reasoning and conclusions. Attempts are generally made to base the decision on the precise language of the particular Constitution construed, but a careful examination of the reasoning

has revealed a number of common issues confronted by their respective courts. A brief summary of the resolution of these issues in other states serves to underscore the utility of the objective test adopted by the court in *Sundby*. In addition, an analysis of these decisions illustrates that the Wisconsin governor's veto authority as interpreted by the court in *Sundby* is much broader than that provided in the majority of state constitutions.

The more restrictive view of the governor's veto authority taken by the courts in other jurisdictions can be explained by the following factors: (1) the influence of judicial notions of separation of powers; and (2) the emphasis placed on particular language in state constitutions as a controlling factor in defining the limits of the executive veto authority.

A. *The Separation of Powers Analysis*

The analysis adopted by many jurisdictions for defining the scope of the executive's partial veto power is premised upon judicial notions of the separation of powers doctrine in the respective states. Under this analysis, any exercise of the partial veto which is tantamount to legislation is unconstitutional since it encroaches upon the power of the legislative branch. This approach is unsatisfactory since it is premised upon judicial notions of the parameters of the legislative and executive functions which are necessarily subjective in nature. Essentially, if the exercise of the veto authority has an "affirmative" effect on legislation, this analysis dictates that the exercise of the veto by the governor is unconstitutional. It is submitted that any exercise of the governor's veto power may have an "affirmative" effect since it necessarily changes the intent of the legislature. Under this analysis, the governor is precluded from exercising his veto power if the effect would be tantamount to enacting new legislation. The necessary result is that the governor does not possess any legislative power. This analysis is also noteworthy for its failure to provide an objective test for defining the scope of the veto authority which may serve as

in each case will disclose that the conclusion is really based on the view the particular court takes as to the general nature of the veto power and the purpose to be accomplished by the special constitutional provision . . .

Fairfield v. Foster, 25 Ariz. 146, 150-51, 214 P. 319, 321 (1923). See also *State v. Baynard*, 203 La. 711, 15 So. 2d 649 (1943); *Fergus v. Rutel*, 270 Ill. 304, 110 N.E. 130 (1915); *State v. Forsyth*, 21 Wyo. 359, 131 P. 521 (1913).

a guide for a governor in the exercise of this important power. The inadequacy of this analysis is apparent upon a careful scrutiny of decisions in jurisdictions adopting it.

In a recent challenge to the governor's partial veto authority under New Mexico's Constitution,¹⁵ the supreme court of that state reaffirmed the application of this negative rule in the following terms:

The power of partial veto is the power to disapprove. This is a negative power, or a power to delete or destroy a part of item, and is not a positive power, or a power to alter, enlarge or increase the effect of the remaining parts or items. It is not the power to enact or create new legislation by selective deletions.¹⁶

The courts' concern in a number of jurisdictions that the governor's selective use of the veto authority could have the effect of changing the legislature's intent in a bill submitted for executive approval is founded upon the judicially perceived need to separate the powers of the legislative branch from those of the executive branch.¹⁷

One of the more recent restatements of this concept is contained in the Connecticut Supreme Court opinion in *Caldwell v. Meskill*.¹⁸ The bill affected in *Caldwell* related to highways and highway aids. The governor vetoed the statement of legislative purpose in the bill and a provision relating to the powers

15. The New Mexico Constitution contains the following provision relating to the governor's partial veto authority:

The governor may in like manner approve or disapprove any part or parts, item or items, of any bill appropriating money, and such parts or items approved shall become a law, and such as are disapproved shall be void unless passed over his veto, as herein provided.

N.M. CONST. art. IV, § 22.

16. *State ex rel. Sego v. Kirkpatrick*, 86 N.M. 359, ___, 524 P.2d 975, 981 (1974). *Accord*, *Benyson v. Secretary of Justice*, 299 U.S. 410 (1937); *Fitzsimmons v. Leon*, 141 F.2d 886 (1st Cir. 1944); *Cascade Tel. Co. v. Tax Comm'r*, 176 Wash. 616, 30 P.2d 976 (1934); *Woods v. State Administration Bd.*, 255 Mich. 220, 238 N.W. 16 (1935); *Patterson v. Dempsey*, 152 Conn. 431, 207 A.2d 739 (1965); *Veto Cases*, 69 Mont. 325, 222 P. 428 (1924); *State v. Holder*, 76 Miss. 158, 23 So. 643 (1898).

17. The important role of the separation of powers doctrine in the negative analysis relating to the governor's partial veto power is evident in *Patterson v. Dempsey*, 152 Conn. 431, ___, 207 A.2d 739, 746 (1965) wherein the court stated:

[T]he fundamental reason why a partial disapproval or veto is not generally authorized, at least in the case of general legislation, is because of the separation of powers among the executive, legislative and judicial branches of the government. All affirmative legislative powers are given exclusively to the General Assembly.

18. 164 Conn. 299, 320 A.2d 788 (1973).

of the Connecticut commissioner of transportation. The Connecticut Constitution confers power upon the governor to approve any item or items of any bill making appropriation of money embracing distinct items while at the same time approving the remainder of the bill . . ."¹⁹ The court followed its earlier decision²⁰ wherein it held that the governor's veto authority did not include the power to change the legislative intent in a bill:

Although there is authority in other jurisdictions to the contrary, we see no reason to reverse the clear holding of the Patterson case. The court recognized that to some extent such a holding circumscribes the authority of the governor, but "[i]f the governor were allowed to disapprove or veto parts of a bill involving general legislation, he could, in the case of many if not most such bills, by the exercise of that power, eliminate selected portions of a bill in such a manner as to change its meaning and thereby, in effect, enact an entirely different bill. This would usurp the legislative function, which is committed to the General Assembly alone."²¹

This negative concept was also relied on in a recent decision rendered by the Iowa Supreme Court in *Welden v. Ray*.²² In *Welden*, the Iowa governor attempted to veto express conditions, limitations and contingencies contained in the legislature's appropriation bill. The Iowa Constitution empowers the governor to "approve appropriation bills in whole or in part, and [the governor] may disapprove any item of an appropriation bill."²³ The Iowa Supreme Court concluded that such vetoes were invalid since they had the effect of encroaching upon the power of the legislature; that the appropriation of money was essentially a legislative function with the power to specify how the money would be spent inherent in that legislative power. The court then quoted the New Mexico court:

19. CONN. CONST. art. IV, § 16.

20. *Patterson v. Dempsey*, 152 Conn. 431, 207 A.2d 739 (1965). In *Patterson*, the Connecticut Supreme Court indicated that the governor does not have the power to change the legislature's intent embodied in its bills:

If the governor were allowed to disapprove or veto parts of a bill involving general legislation, he could, in the case of many if not most such bills, by the exercise of that power, eliminate selected portions of a bill in such a manner as to change its meaning and thereby, in effect, enact an entirely different bill.

Id. at ____, 207 A.2d at 746.

21. *Caldwell v. Meskill*, 164 Conn. 299, ____, 320 A.2d 783, 791-92 (1973).

22. ____, 1a. ____, 229 N.W.2d 706 (1975).

23. IOWA CONST. art. IV, § 1.

We have heretofore held that the Legislature has the power to affix reasonable provisions, conditions or limitations upon appropriations and upon the expenditure of the funds appropriated. . . . The Governor may not distort, frustrate or defeat the legislative purpose by a veto of proper legislative conditions, restrictions, limitations or contingencies placed upon an appropriation and permit the appropriation to stand. He would thereby create new law, and this power is vested in the Legislature and not in the Governor.²⁴

This concern for a separation of powers between the executive and legislative branches has encouraged many courts to adopt a strict construction of the partial veto provision contained in their respective state constitutions.²⁵ These courts have strictly construed these constitutional provisions by limiting the governor's exercise of his veto authority to specific monetary items contained in appropriation bills.²⁶

The application of the negative analysis has caused a great deal of uncertainty for governors in the exercise of their veto authority. Under this analysis, the governor must decide if deletions will only have a "negative" effect on the proposed legislation. It is submitted that every exercise of a partial veto may have a negative or affirmative effect depending upon one's

24. ____ Ia. at ____, 229 N.W.2d at 711-12 quoting *State ex rel. Sego v. Kirkpatrick*, 86 N.M. 359, 365, 524 P. 2d 975, 982 (1974) (citations omitted).

25. See *In re Opinion of the Justices*, 294 Mass. 616, 2 N.E.2d 789 (1936). In *Brown v. Morris*, 365 Mo. 946, ____, 290 S.W.2d 160, 168 (1956), the court stated:

The veto power of the executive should not be construed to restrict the power of the general assembly or the people unless such intent clearly appears (citations omitted). The authority of an executive to set aside an enactment of the legislative department is an inherent power, and can be exercised only when sanctioned by a constitutional provision and only in the manner and mode prescribed. The executive's veto power is a power conditionally to prevent legislation, but is not the power to enact new laws or to recall or modify old laws. The veto power is in derogation of the general plan of the state government, and provisions authorizing it must be strictly construed, so as to limit its exercise to the powers expressly enumerated or necessarily implied.

26. Article 63, § 5, of the Massachusetts Constitution provides that "The governor may disapprove or reduce items or parts of items in any bill appropriating money." The supreme court of Massachusetts strictly construed this provision as follows:

Power is conferred upon the Governor to reduce a sum of money appropriated, or to disapprove the appropriation entirely. No power is conferred to change the items of an appropriation except by reducing the amount thereof. Words or phrases are not items or parts of items.

In re Opinion of the Justices, 294 Mass. 616, ____, 2 N.E.2d 789, 790 (1936). Cf. *Caldwell v. Meskill*, 164 Conn. 259, 320 A.2d 788 (1973); *State ex rel. Cason v. Bond*, 435 S.W.2d 385 (Mo. 1973); *Patterson v. Dempsey*, 152 Conn. 431, 207 A.2d 739 (1965).

perspective of the proper role of the governor vis-a-vis the legislature under the separation of powers doctrine. It is precisely the uncertainty caused by the adoption of a semantic test which has made the negative analysis less than satisfactory for determining the validity of the exercise of a governor's partial veto authority under various state constitutional provisions.

B. State Constitutions — Variations of Veto Authority

A governor's constitutional authority to partially veto bills passed by the state legislature may be analyzed as falling within one of two categories.²⁷ In the first category, a governor's authority is limited to "items of appropriations bills."²⁸ A state which has a constitutional provision in this category limits the governor's partial veto authority to specific monetary items contained in appropriation bills.²⁹ In this category, the governor may strike out specific monetary amounts without changing the legislative intent which accompanies such appropriations. However, the governor is precluded from selectively deleting non-monetary clauses contained in appropriation bills.³⁰

The Missouri Supreme Court emphasized this point in its opinion in *State ex rel. Cason v. Bond*.³⁰ In *Cason* the Missouri governor vetoed language relating to the legislative purpose in a number of provisions contained in an emergency appropriation bill. The Missouri Constitution allows the governor to "object to one or more items or portions of items of appropriation of money."³¹ The court concluded that the governor's veto was invalid since his constitutional authority did not encompass a veto applied to non-monetary clauses in an appropria-

27. WISCONSIN LEGISLATIVE REFERENCE LIBRARY, DIGEST OF PROVISIONS IN STATE CONSTITUTIONS ALLOWING THE GOVERNOR TO VETO ITEMS IN APPROPRIATION BILLS (Feb. 1927).

28. For example, the Connecticut State Constitution provides in relevant part as follows: "The governor shall have power to disapprove of any item or items of any bill making appropriations of money embracing distinct items while at that same time approving the remainder of the bill . . ." CONN. CONST. art. IV, § 15.

29. In this regard, the United States Supreme Court stated: "An item of an appropriation bill obviously means an item which in itself is a specific appropriation of money, not some general provision of law which happens to be put into an appropriation bill. *Bengzon v. Secretary of Justice*, 299 U.S. 416, 414 (1937).

In a similar vein, the Virginia Supreme Court stated: "An item in an appropriation bill is an indivisible sum of money dedicated to a stated purpose." *Commonwealth v. Dodson*, 176 Va. 281, 296, 11 S.E.2d 120, 127 (1940). Cf. *State ex rel. Sego v. Kirkpatrick*, 86 N.M. 359, 524 P.2d 975 (1974); *Patterson v. Dempsey*, 152 Conn. 451, 207 A.2d 739 (1965); *In re Opinion of the Justices*, 294 Mass. 610, 2 N.E.2d 789 (1936).

30. 495 S.W.2d 359 (Mo. 1973).

31. Mo. CONST. art. IV, § 26.

tion bill: "We hold that 'item' as used in Art. IV, sec. 26, refers to a separable sum of money appropriated. It does not refer separately to words, phrases or sentences which express purposes or conditions with reference to the appropriation made"³²

The second category of partial veto provisions consists of those which afford the governor the authority to object to sections or parts of appropriation bills. State courts with constitutional provisions in the second category have held that the governor has a more extensive authority to object partially to provisions contained in appropriation bills. Essentially, the governor is permitted to object to independent "sections or parts" of the appropriation bills regardless of the presence of specific monetary appropriations in these sections or parts.

As an illustration of a constitutional provision in this category, the Washington State Constitution provides in relevant part as follows: "If any bill presented to the governor contains several sections or items, he may object to one or more sections or items while approving other portions of the bill."³³

The Washington Supreme Court in *Cascade Telephone Co. v. State Tax Commission*³⁴ construed the word "sections" in this provision to mean any "subject matter" in an appropriation bill which is independent from the remaining portions of the bill. In *Cascade*, the court upheld the governor's veto of a section in an appropriation bill since the veto "did not modify or limit in any way or in any degree the preceding provisions, but . . . [constituted] a new separate, distinct and . . . independent provision"³⁵

An issue of some importance which has developed in a number of jurisdictions concerns the ability of the governor to object partially to conditions contained in appropriation bills.

32. 495 S.W.2d at 392. See also *State ex rel. Sego v. Kirkpatrick*, 86 N.M. 359, 524 P.2d 975 (1974).

33. WASH. CONST. art. III, § 12.

34. 176 Wash. 616, 30 P.2d 976 (1934).

35. *Id.* at 619-20, 30 P.2d at 977. In Wisconsin, the supreme court has upheld the authority of the governor to veto provisions in an appropriation bill which do not contain specific monetary items:

It follows that, in approving those parts of the Bill, which now constitute ch. 15, Laws of 1935, and in disapproving the other parts of the bill which were not essential, integral, and interdependent parts of those which were approved the governor was acting entirely within his constitutional prerogative under sec. 10, art. V, Wisconsin Constitution.

State ex rel. Wisconsin Tel. Co. v. Henry, 218 Wis. 302, 317, 260 N.W. 486, 493 (1935).

With regard to the two categories of partial veto states, courts in the first category have uniformly held that a governor is precluded from vetoing conditions contained in appropriation bills. The courts have held that the effect of such action would change the legislative intent and encroach upon the power of the legislature.³⁶ However, there is some authority from jurisdictions in the second category which permits the governor to object to conditions contained in an appropriation if such conditions are not inseparably related to specific appropriations.³⁷

A comparison between the analysis utilized in other jurisdictions and the analysis adopted in Wisconsin will serve to illustrate the broad authority conferred on the Wisconsin governor under the objective analysis adopted by the Wisconsin Supreme Court in *State ex rel. Sundby v. Adamany*.³⁸ In addition, the *Sundby* analysis serves as an attractive alternative to the "negative" analysis formulated in many jurisdictions. The analysis delineated in *Sundby* evolved from an expansive interpretation of the governor's veto power by the Wisconsin court subsequent to the adoption of the partial veto provision in the Wisconsin Constitution.

III. WISCONSIN BACKGROUND — PARTIAL VETO AUTHORITY

A. 1930 Amendment

The original Wisconsin Constitution adopted in 1848 did not invest the governor with a partial veto authority.³⁹ The

36. In *State ex rel. Segov v. Kirkpatrick*, 86 N.M. 350, —, 524 P.2d 975, 982 (1974), the court stated:

The Governor may not distort, frustrate or defeat the legislative purpose by a veto of proper legislative conditions, restrictions, limitations or contingencies placed upon an appropriation and permit the appropriation to stand. He would thereby create new law, and this power is vested in the Legislature and not in the Governor.

See also *In re Opinion of the Justices*, 294 Mass. 616, 2 N.E.2d 789 (1936); *State ex rel. Cason v. Bond*, 495 S.W.2d 385 (Mo. 1973); *Veto Cases*, 69 Mont. 325, 222 P. 428 (1924); *Miller v. Walley*, 122 Miss. 521, 84 So. 466 (1920); *State ex rel. Teachers and Officers of Indus. Inst. and College v. Holder*, 76 Miss. 158, 23 So. 643 (1898).

37. See *Welden v. Ray*, — Ia. —, —, 229 N.W.2d 706, 714 (1975); *State ex rel. Turner v. Highway Comm'n.*, — Ia. —, —, 186 N.W.2d 141 (1971); *State ex rel. Wisconsin Tel. Co. v. Henry*, 218 Wis. 302, 309, 260 N.W. 486, 490 (1935).

38. 71 Wis. 2d 118, 237 N.W.2d 910 (1975).

39. Wis. CONST. art. V, § 10 (1848):

Every bill which shall have passed the legislature shall, before it becomes a law, be presented to the governor. If he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large upon the journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of the members present shall

governor's authority was limited to a general veto authority analogous to that possessed by the President in the United States Constitution. However, as early as 1913, Governor Francis E. McGovern noted that the legislature's practice of combining diverse subjects of legislation in one "appropriation bill" and the lack of the partial veto authority required him to approve such "omnibus" appropriation bills in total even though he objected to certain subjects of legislation contained therein.⁴⁰ According to Governor McGovern, this lack of a partial veto authority for the governor in the Wisconsin Constitution had the necessary effect of significantly weakening the powers of the executive vis-a-vis the legislature.⁴¹

agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the members present, it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays, and the names of the members voting for or against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law, unless the legislature shall, by their adjournment, prevent its return; in which case it shall not be a law.

40. In a special message delivered to the legislature by Governor McGovern on August 7, 1913, he stated:

[T]he significant result of the change (to omnibus appropriation bills) has been to practically nullify the executive veto with respect to all financial measures. As these bills have come to me during the closing days of this session there are many items in them that meet my approval; a number I should prefer to see reduced in amount; and others I should like to veto altogether if I had the power. But no chance to do this or to separate the good from the bad was given me. . . . The only alternative presented therefore was to sign these bills, defective in a number of particulars as I regarded them, or to veto them as a whole, thus rejecting what I approved as well as what I disapproved.

LEGISLATIVE REFERENCE BUREAU, *THE USE OF THE PARTIAL VETO IN WISCONSIN*, INFORMATIONAL BULLETIN 75-113-6, at 1 (1975) [hereinafter cited as *PARTIAL VETO*].

41. [I]t is clear that under the budget plan of appropriating money the executive department no longer exercises the influence or power it once had or was intended by the constitution to possess. It seems to me therefore something should be done to restore matters to the equilibrium of power and responsibility that has always existed between the executive and legislative branches of government in respect to these matters. With the introduction of the budget system and the framing of money bills as omnibus measures, authority should be conferred upon the governor that he does not now possess. . . . Otherwise, he cannot fairly be held responsible for appropriation measures. Under the method of legislation pursued at this session he now has in fact practically nothing to say about what shall go into appropriation bills or be kept out of them. But nothing more deeply concerns the people of the state than the appropriation of public money and the imposition of taxes; and to no state officer do they more quickly and properly turn for explanation when expenditures and taxes are high than to the governor.

Id. at 2.

In 1925, a resolution was introduced in the legislature to expand the governor's veto authority.⁴² However, the senate failed to approve the resolution which would have provided the governor with authority to object to "parts of items" in appropriation bills.⁴³ Subsequent to this early resolution, a constitutional amendment was proposed which expanded the governor's authority to object to "parts of appropriation bills." Governor Philip LaFollette in his campaign for governor in 1930 was one of the more vocal opponents of this amendment claiming that it would centralize too much power with the governor to the exclusion of the legislative branch.⁴⁴ However, the Wisconsin voters approved the amendment to the Wisconsin Constitution in 1930. The amendment added the following language to article V, section 10: "Appropriation bills may be approved in whole or in part by the governor, and the part approved shall become law and the part objected to shall be

42. The 1925 Senate Joint Resolution 23 provided in relevant part as follows:

The governor may disapprove or reduce items or parts of items in any bill appropriating money. . . . As to each item disapproved or reduced, he shall transmit to the house in which the bill originated his reasons for such disapproval or reduction, and the procedure as to such items shall then be the same as in the case of a bill disapproved as a whole. In case he shall fail so to transmit his reasons for such disapproval or reduction within six days (Sundays excepted) after the bill shall have been presented to him such items shall have the force of law unless the legislature by adjournment shall prevent such transmission, in which case they shall not be law.

PARTIAL VETO, *supra* note 40, at 2.

43. The senate vote against adoption was 14 opposed to 9 in favor. A subsequent resolution was introduced in the next session of the legislature which would have endowed the governor with authority to object to parts of appropriation bills. Senator William Titus requested that the Wisconsin Legislative Reference Bureau draft a resolution "to allow the Governor to veto items in appropriation bills." However, there is no record of hearings concerning the use of "part" as opposed to "item" in this resolution. PARTIAL VETO, *supra* note 40, at 2; see also WISCONSIN LEGISLATIVE REFERENCE LIBRARY, LEGISLATIVE HISTORY AND DRAFTING RECORD OF THE JOINT RESOLUTIONS AMENDING THE CONSTITUTION RELATING TO THE APPROVAL OF BILLS BY THE GOVERNOR (April, 1924).

44. In this regard, Phillip LaFollette stated:

The effect of the amendment is to give the chief executive additional power in the general conduct and control of government. It is another step in the concentration of power in the executive office. . . . The whole tendency of the past two decades has been towards over concentration of authority. The powers of the several states over their own domestic matters have been increasingly undermined and concentrated in Washington. The powers of the legislatures and of congress have been encroached upon by the executive.

PARTIAL VETO, *supra* note 40, at 2. However, it is interesting to note that after LaFollette became Governor in 1930, he exercised this veto power in a bill which did not involve an appropriation. *Id.* at 3.

returned in the same manner as provided for other bills."⁴⁵

The construction of the language "approved in whole or in part" has been the subject of a good deal of controversy in Wisconsin concerning the extent of the governor's authority to object to portions of appropriation bills passed by the state legislature. These controversies have been reflected in a number of court decisions and attorney general opinions which provide the background for the most recent judicial proclamation on this issue in *Sundby v. Adamany*.

B. Wisconsin Decisions

The parameters of the governor's authority under article V, section 10 of the Wisconsin Constitution to object in part to appropriation bills were first delineated in *State ex rel. Wisconsin Telephone Co. v. Henry*.⁴⁶ On April 2, 1935, the Wisconsin Telephone Company initiated an original action in the Supreme Court of Wisconsin and alleged that the governor's objection to parts of Assembly Bill 48⁴⁷ was an unconstitutional exercise of his authority under article V, section 10, of the Wisconsin Constitution. The purpose of Assembly Bill 48 was the appropriation by the state of funds which were necessary for immediate emergency relief. The governor disapproved parts of the bill which did not contain specific appropriations and returned the same to the legislature with his objections.⁴⁸ Wisconsin Telephone claimed that the governor's actions in disapproving parts of the bill were unconstitutional since the governor did not have the authority to approve the appropriation and disapprove a proviso or a condition inseparably connected to the appropriation. In addition, Wisconsin Telephone

45. WIS. CONST. art. V, § 10.

46. 218 Wis. 302, 260 N.W. 486 (1935).

47. 1935 Wis. Laws, ch. 15 (Wis. A.B. 48), was entitled "An act to raise revenues for emergency relief purposes, and making appropriations." Secs. 1 and 9 of the bill stated the intent of the legislature in enacting the bill. Secs. 2 through 7 contained the provisions for raising the necessary revenue, and § 8 contained provisions appropriating "from the general fund for relief purposes" the entire receipts of the revenue raised under §§ 2-7; and subsec. 1 of § 8 provided that "[t]he amount herein appropriated for relief purposes shall be allotted and used as provided by law." Subsecs. 3 through 9 were added to the bill by amendment and provided for distribution through an agency thereof created by the bill designated, "The Governor's Outdoor Relief Administration." *Id.* at 507-08, 260 N.W. at 489.

48. The governor approved all the parts of Wis. A.B. 48 except §§ 1 and 9, which declared the legislative intent of the act, and subsec. 3 to 9 of § 8. *Id.* at 508-09, 260 N.W. at 489-90.

argued that the governor did not have authority to disapprove parts of an appropriation bill which do not contain an appropriation.⁴⁹

In *Henry*, the court upheld the constitutionality of the governor's exercise of his veto authority. In the context of its opinion, the court developed the following standard which defines the governor's authority to object in part to appropriation bills: (1) the bill must be an appropriation bill,⁵⁰ (2) the part the governor objects to need not involve an appropriation,⁵¹ and (3) the approved portion must constitute a complete, workable law.⁵²

The opinion in *Henry* was also significant in that the court implied that it would not be influenced by the restrictive no-

49. *Id.* at 309, 260 N.W. at 490.

50. The court stated: "That the Bill is an appropriation bill within the meaning of that term, as used in Sec. 10, Art. V, Wisconsin Constitution, is not questioned." *Id.* at 310, 260 N.W. at 490. The definition of an appropriation bill was discussed by the court in *State ex rel. Finnegan v. Dammann*, 220 Wis. 143, 148, 264 N.W. 622, 624 (1936).

51. The court observed that the word "part" within the meaning of article V, § 10, denotes a broader authority than the authority to veto items granted to governors of most other states. In *Henry*, the court stated as follows:

On the other hand, if, in conferring partial veto power, by the amendment of sec. 10, art. V, Wisconsin constitution, in 1930, it was intended to give the executive such power only in respect to an item or part of an item in an appropriation bill, then why was not some such term as either "item" or "part of an item" embodied in that amendment, as was theretofore done in similar constitutional provisions in so many other states, instead of using the plain and unambiguous terms "part" and "part of the bill objected to," without any words qualifying or limiting the well-known meaning and scope of the word "part?" As the meaning of that word, as used in sec. 10, art. V, Wisconsin constitution, is not thus qualified or limited, or otherwise rendered doubtful by reason of context, or uncertainty as to application to a particular subject matter, or otherwise, there is nothing because of which that word, as used in that section, is not to be given its usual, customary, and accepted meaning

218 Wis. at 313, 260 N.W. at 491.

52. The court stated:

As that bill is worded, there is not only an entire absence of any expressed provisor or condition, or otherwise expressly stated connection between the parts disapproved and the parts which were approved by the governor, but, on the other hand, the parts approved, as they were in the bill, as it was when originally introduced, and as they continued therein at all times and are still in chapter 15, Laws of 1935, constitute, in and by themselves, a complete, entire, and workable law, for the appropriation for relief purposes, of the money to be raised, as tax revenues thereunder, and for the allotment and use of that appropriation (excepting as to the relatively small amounts otherwise specifically allotted in subds. (a), (am), (b), (c), of sub. (2) and sub. (2a), of sec. 6), through the agency of the industrial commission

Id. at 314, 260 N.W. at 491-92 (emphasis added).

tion of separation of powers so frequently employed by courts in other jurisdictions to invalidate a governor's exercise of veto authority. The court stated: "[T]here is nothing in that provision [article V, section 10] which warrants the inference or conclusion that the governor's power was not intended to be as coextensive as the legislature's power to join and enact separable pieces of legislation in an appropriation bill."⁵³

Finally, the court refused to decide whether a governor in Wisconsin is precluded from objecting to a proviso or condition which is inseparably connected with a specific appropriation in an appropriation bill. In *Henry*, the court acknowledged that this issue was not presented to it for a resolution on the facts of that case.⁵⁴

The analysis employed by the court in *Henry* was subsequently reaffirmed in *State ex rel. Martin v. Zimmerman*.⁵⁵ In *Zimmerman*, the attorney general for the State of Wisconsin challenged the governor's exercise of his veto authority in objecting to parts of Senate Bill 563. In upholding the validity of the governor's exercise of his authority under article V, section 10, the court adopted the analysis formulated in *Henry*:

We think it clear that ch. 533, Laws of 1939, which contains all of Bill No. 563S, excepting the parts thereof disapproved by the governor, constitute an effective and enforceable law on fitting subjects for a separate enactment by the legislature. . . . The question here is whether the approved parts, taken as a whole, provide a complete workable law. We have concluded that they do, and we must give them effect as such.⁵⁶

In addition, *Zimmerman* is significant in that the court recognized that the governor could utilize the partial veto authority under article V, section 10 to effectuate important

53. *Id.* at 315, 260 N.W. at 492.

54. The court stated:

In passing upon those contentions, we find it unnecessary to decide in this case whether the governor is empowered to disapprove a proviso or condition in the appropriation bill which is inseparably connected with the appropriation, because, upon analyzing the terms of the bill in question, we have concluded, for reasons hereinafter stated, that the parts which were disapproved by the governor were not provisos or conditions which were inseparably connected to the appropriation.

Id. at 309, 260 N.W. at 491.

55. 233 Wis. 442, 289 N.W. 662 (1940).

56. *Id.* at 449-50, 289 N.W. at 665.

changes in legislative policy.⁵⁷ The court departs from the strict separation of powers analysis adopted in other jurisdictions in its recognition that the governor has the power to "legislate" through the use of the partial veto in Wisconsin.

Finally, *Zimmerman* is significant in the development of the governor's partial veto authority in Wisconsin in that it reaffirms the policy behind the constitutional grant of that authority to the governor. In effect, the court stated that the purpose of article V, section 10 was to prevent the practice of combining together in one act inconsistent subjects of legislation in order to force the governor to approve the whole act consisting of objectionable portions.⁵⁸

The office of the attorney general as well as the Wisconsin Supreme Court has issued a number of opinions regarding the efficacy of particular exercises of the governor's veto authority. Although these opinions have little precedential value in Wisconsin, they serve to illustrate the scope of the controversy in Wisconsin. The attorney general expressed the opinion that the governor's partial veto authority does not encompass the power to partially disapprove administrative agency orders⁵⁹ nor the power to object to parts of separable pieces of legislation contained within an appropriation bill.⁶⁰ In addition, the attorney general ruled that the governor does not have the power to

57. The court stated: "It must be conceded that the governor's partial disapproval did effectuate a change in policy; so did the partial veto of the bill involved in the case of *State ex rel. Wisconsin Telephone Co. v. Henry*, . . . which this court held to be valid." *Id.* at 450, 289 N.W. at 665.

58. In this regard, the court stated:

Its purpose was to prevent, if possible, the adoption of omnibus appropriation bills, logrolling, the practice of jumbling together in one act inconsistent subjects in order to force a passage by uniting minorities with different interests when the particular provisions could not pass on their separate merits, with riders of objectionable legislation attached to general appropriation bills in order to force the governor to veto the entire bill and thus stop the wheels of government or approve the obnoxious act.

Id. at 447-48, 289 N.W. at 664.

59. In 41 *OP. ATT'Y GEN. WIS.* 206 (1952) the attorney general held that art. V, § 10 of the Wisconsin Constitution does not afford the governor the power to approve in part and reject in part a state conservation commission order. The attorney general stated that such power is limited to appropriation bills.

60. The attorney general stated that the governor could not strike a single digit in a specific appropriation for highway improvements since such an action would have the effect of altering a separable part of an appropriation bill. In the opinion of the attorney general, the governor's authority is limited to "approve or reject, in whole or in part, appropriation bills." 62 *OP. ATT'Y GEN. WIS.* 232, 239 (1973).

object to a condition for the appropriation contained in the appropriation bill.⁶¹

However, in other opinions, the attorney general has approved the exercise of the governor's veto of portions of the law relating to compensation of a state agency department's administrators.⁶² Also, the attorney general upheld the governor's authority to disapprove a part of an appropriations bill which is not connected to that portion of the bill which was approved.⁶³

The analysis adopted by the Wisconsin Supreme Court in *Sundby* is not surprising in view of the foregoing precedent in Wisconsin. However, this case is significant in that the practical effect of the result in *Sundby* reveals the broad scope of the executive's partial veto authority under the Wisconsin Constitution.

IV. STATE EX REL. SUNDBY V. ADAMANY

On January 28, 1975, the Wisconsin legislature's joint committee of finance introduced Assembly Bill 222 which was the executive budget bill submitted by the governor.⁶⁴ The portion of Assembly Bill 222 which was material to this case involved the imposition of levy limits on towns, villages, cities, and counties. The proposal as submitted by the governor and incorporated in Assembly Bill 222 imposed a maximum levy allowed

61. In 63 OP. ATT'Y GEN. WIS. 313 (1974), the attorney general concluded that the governor could not object to contingencies or conditions placed in the appropriation by the legislature. Sec. 3 of the bill in question when passed by the legislature appropriated for snowmobile enforcement purposes the lesser of \$130,000 or the amount of interest earned by snowmobile registration fees. By eliminating the second phrase, the effect of the governor's veto was to appropriate in any year, \$130,000 for enforcement regardless of the amount of interest earned by registration fees. Since this action amounted to removal of a contingency in an appropriation bill, the attorney general concluded that the governor exceeded his authority under art. V, § 10.

62. In 55 OP. ATT'Y GEN. WIS. 160 (1966), the attorney general approved the governor's exercise, even though the partial veto effectuated a change in policy, since the parts of the bill he approved "taken as a whole, provide a complete, workable law."

63. The attorney general upheld the governor's objection to the restriction upon an indigent's exemption from payment of clerk's fees and suit taxes and his approval of an increase in judicial salaries contained in an appropriation bill. The attorney general concluded that the exercise of the governor's veto authority was constitutional since "There is no connection between the approved parts of the bill, on the one hand, and the vetoed part on the other." 59 OP. ATT'Y GEN. WIS. 95, 101 (1970).

64. The joint committee on finance is required to incorporate the governor's recommendation for appropriations for the next biennium into the executive budget bill. See WIS. STAT. § 16.47 (1973).

each local government unit.⁶⁵ Under the governor's proposal, this limit could only be exceeded by the unit if the electors approved the increase in a general referendum.⁶⁶ Subsequently, the senate in its substitute amendment to Assembly Bill 222 adopted identical language in the corresponding sections of the bill.

However, the assembly-senate conference committee changed the procedure for exceeding the levy. In addition to the general referendum procedure, the governing body could exceed the levy limit without electoral approval provided a petition, signed by at least five percent of the electorate requesting a general referendum, were not filed subsequent to the local government's publication of a notice of intent to exceed the levy limit.⁶⁷

65. The relevant sections in Wis. A.B. 222 concerning the imposition of levy limits are all identical, except for the references to towns, villages, cities and counties. Since each of the subsections are identified except for the references to the appropriate governing bodies, only proposals affecting the levy limits for towns in § 60.175(6) and (7) will be set forth herein. See note 66 *infra*.

66. The governor proposed that Wis. STAT. § 60.175 be created, subsecs. (6) and (7) thereof to read as follows:

(6) The department of revenue shall determine the maximum levy allowed each town for town purposes under this section and shall certify such amount to each town on November 15 of each year, commencing with 1975. If the town levies taxes in excess of such maximum without receiving approval of the electors under sub. (7), the excess amount shall be subtracted from subsequent distributions of shared taxes under subch. 1 of ch. 79 until fully recovered.

(7) The town board, by resolution adopted by a majority vote of those members present and voting may submit to the electors of the town at a spring election, general election or special election the question of whether the town may levy taxes for town purposes in excess of the maximum amount certified under this section by the department of revenue.

(a) The question presented to the electors shall be in substantially the following form:

Should the town board be authorized to adopt a property tax levy for town purposes for this year which is in excess of the maximum levy certified by the state?

(b) The authorization by referendum shall pertain only to the levy next following the referendum.

(c) The clerk of the town shall notify the department of revenue of the result of any such referendum no later than 10 days thereafter.

Wis. A.B. 222, § 435 (1975 Sess.).

67. The 1975 Conference Subcommittee Amendment 1 to Wis. A.B. 222 (1975 Sess.) proposed that Wis. STAT. § 60.175(7) read as follows:

(7) If the town board desires to increase its tax levy above the limitations specified in this section, it shall publish such intent in a class 1 notice under ch. 985 in the official town newspaper. The notice shall include a statement of the purpose and the amount of the proposed levy and the amount by which it wishes to exceed the limits imposed by this section. If, within 20 days after

The assembly-senate conference committee's proposal was passed by the legislature. Upon submission to the governor, he approved those parts of the bill which corresponded to his original executive budget bill and objected to the remaining parts of the bill.⁶⁸ The effect of the governor's partial veto in *Sundby* was to require voter approval in a general referendum in every case where the local government intended to exceed its levy

publication of the notice, a petition is filed with the town clerk signed by a number of electors equal to, or in excess of, 5% of the number of electors casting ballots in the town in the last gubernatorial election, the question of the proposed amount of increase in levy above the limitations specified in this section shall be submitted to a referendum at a spring election, general election or special election. If the increase is approved at the referendum, or if no petition is timely filed, the town may increase its levy in such amount and shall notify the secretary of revenue of such increase, on a form provided by the secretary, on or before March 1 following the levy.

(a) The question presented to the electors shall be in substantially the following form:

Should the town board be authorized to adopt a property tax levy for town purposes for this year which is in excess of the maximum levy certified by the state?

(b) The authorization by referendum shall pertain only to the levy next following the referendum.

(c) The clerk of the town shall notify the department of revenue of the result of any such referendum no later than 10 days thereafter.

68. As finally adopted in 1975 Wis. Laws, ch. 39, Wis. STAT. § 60.175(7) reads as follows:

(7) If the town board desires to increase its tax levy above the limitations specified in this section, it shall publish such intent in a class 1 notice under ch. 985 in the official town newspaper. The notice shall include a statement of the purpose and the amount of the proposed levy and the amount by which it wishes to exceed the limits imposed by this section. *If within 20 days after publication of the notice, a petition is filed with the town clerk signed by a number of electors equal to, or in excess of, 5% of the number of electors casting ballots in the town in the last gubernatorial election, the question of the proposed amount of increase in levy above the limitations specified in this section shall be submitted to a referendum at a spring election, general election or special election. If the increase is approved at the referendum, or if no petition is timely filed, the town may increase its levy in such amount and shall notify the secretary of revenue of such increase, on a form provided by the secretary, on or before March 1 following the levy.*

(a) The question presented to the electors shall be in substantially the following form:

Should the town board be authorized to adopt a property tax levy for town purposes for this year which is in excess of the maximum levy certified by the state?

(b) The authorization by referendum shall pertain only to the levy next following the referendum.

(c) The clerk of the town shall notify the department of revenue of the result of any such referendum no later than 10 days thereafter.

(Portions in italics were line vetoed by the governor.)

limit. Consequently, through the use of his veto authority, the governor eliminated the option provided by the legislature and adopted the procedure which was originally proposed in the executive budget bill.⁶⁹

The Wisconsin legislature failed to override the governor's exercise of the veto and the part of Assembly Bill 222 which was approved became law on July 30, 1975.⁷⁰ A petition challenging the constitutionality of the governor's exercise of the partial veto of sections of Bill 222 was filed as an original action in the Wisconsin Supreme Court.

The court essentially adopted the analysis originally formulated in *State ex rel. Henry v. Wisconsin Telephone Co.*⁷¹ and reaffirmed in *State ex rel. Martin v. Zimmerman*⁷² in support of its conclusion that the governor acted within his authority. In this regard, the court stated:

Thus, *Henry* and *Martin* establish the principle that the partial veto power may be utilized to veto any portion of a bill, whether the portion itself is an item of appropriation or not, even if the result effectuates a change in legislative policy, as long as the portion vetoed is separable and the remaining provisions constitute a complete and workable law.⁷³

In addition, the court reaffirmed the broad scope of the governor's partial veto authority. In effect, the court ruled that

69. The governor explained his veto which, in effect, made mandatory the local referendums which the bill, as passed by the legislature, had made optional:

Sections 435, 439, 441, 442 and 457 allow municipalities or counties to exceed the limits unless their citizens petition for a referendum. I have vetoed this provision to provide instead that a referendum be mandatory whenever a municipality or county believes the limit should be exceeded. A mandatory referendum is preferable because it ensures that a majority vote of the citizens will be required for the limits to be exceeded. Moreover, the partial veto will eliminate the 20-day delay which was required before a decision to raise the tax levy could be finalized. This speed-up of the process should aid municipalities in making their budget decisions.

Legislative Reference Bureau, *Executive Vetoes of Bills Passed by the 1975 Wisconsin Legislature*, Wis. Briefs No. 75-5, at 5 (1975).

70. On July 30, 1975, those portions of Wis. A.B. 222 which were approved by the governor were published in the Wisconsin State Journal. By subsequent action of the legislature, sections of 1975 Wis. Laws, ch. 39 were amended, repealed, and recreated in part by 1975 Wis. Laws, ch. 80. Chapter 80 did not change the referendum provisions of these sections as they appeared subsequent to the governor's partial approval.

71. 218 Wis. 302, 260 N.W. 466 (1935). See notes 38-46 *supra* and accompanying text.

72. 233 Wis. 442, 289 N.W. 662 (1940). See notes 47-50 *supra* and accompanying text.

73. 71 Wis. 2d 118, 130, 237 N.W.2d 910, 916 (1975).

the governor may object to portions of an appropriation bill which are not concerned with specific appropriations.⁷⁴ The court applied the foregoing analysis in reviewing the governor's actions in this case and upheld the validity of the partial objection to Assembly Bill 222: "We conclude the action taken by the governor was valid, in that the portions vetoed, although not actually items of appropriation, were separable provisions, not constituting provisos or conditions to an item of appropriation, and the remaining portions constitute a complete and workable law."⁷⁵

The court's opinion in *Sundby* is also significant in that it expressly rejects the separation of powers analysis prevalent in numerous other jurisdictions.⁷⁶ The court refused to accept the negative analysis inherent in the strict construction of the executive veto authority:

Some argument is advanced that in the exercise of the item veto the governor can negative what the legislature has done but not bring about an affirmative change in the result intended by the legislature. We are not impressed by this argued distinction. Every veto has both a negative and affirmative ring about it.⁷⁷

In rejecting the separation of powers analysis the court explicitly recognized the valid legislative role of the executive in Wisconsin as evidenced by the governor's powers under the Constitution⁷⁸ and the specific authority under the statutes controlling the enactment of budget legislation.⁷⁹ The court

74. The court stated: "The scope of the item veto power was also considered in *State ex rel. Finnegan v. Dammann*. In *Finnegan* the principle was reiterated that the power exists with respect to parts of an appropriation bill not dealing with appropriations." *Id.* at 131, 237 N.W.2d at 916 (footnotes omitted).

75. *Id.* at 135, 237 N.W.2d at 918.

76. See notes 15-26 *supra* and accompanying text.

77. 71 Wis. 2d at 134, 237 N.W.2d at 918.

78. Powers and duties. SECTION 4. The governor shall be commander in chief of the military and naval forces of the state. He shall have power to convene the legislature on extraordinary occasions, and in case of invasion, or danger from the prevalence of contagious disease at the seat of government, he may convene them at any other suitable place within the state. He shall communicate to the legislature, at every session, the condition of the state, and recommend such matters to them for their consideration as he may deem expedient. He shall transact all necessary business with the officers of the government, civil and military. He shall expedite all such measures as may be resolved upon by the legislature, and shall take care that the laws be faithfully executed.

Wis. CONST., art. V, § 4.

79. The court cited the governor's powers under Wis. STAT. § 16.45 *et seq.* (1973).

gave a final stamp of approval to the governor's active involvement in the legislative branch — "The governor, then, does have a constitutionally recognized role in legislation."⁸⁰

Although the *Sundby* decision is important for the issues it decided, it is equally important to recognize that the court did not decide a significant issue within the realm of the executive's veto authority. Since the governor's veto in *Sundby* did not involve an objection to a condition imposed on a specific appropriation or alteration of an appropriation figure, the court did not render an opinion on the propriety of such actions.⁸¹

In short, *Sundby* stands for the proposition that if a governor is presented with a bill which contains an appropriation within its four corners, the governor may object to any portion of the bill provided the part approved constitutes a complete, workable law.

V. SUNDBY V. ADAMANY — A SHIFT IN THE BALANCE OF POWER

It is important to appreciate the significant accumulation of power the court's analysis in *Sundby* affords the governor vis-a-vis the legislature. In effect, the governor can redraft a bill submitted for executive approval by selective deletions of separable parts contained in an appropriation bill. This accumulation of power can best be illustrated by the following example. Assume for purposes of this simplified example that the present Wisconsin statute limiting the lien rights of a landlord were contained in a section appended to an appropriation bill:

Sec. XYZ Lien of Landlord. Except as provided in ss. 281.43 and 704.05(5) or by express agreement of the parties, the landlord has no right to a lien on the property of the tenant; the common-law right of a landlord to distrain for rent is abolished.

71 Wis. 2d at 131-33, 237 N.W.2d at 916-17.

80. *Id.* at 134, 237 N.W.2d at 918.

81. In this regard, the court stated:

Petitioner argues that recent opinions of the attorney general indicate that a governor cannot veto a portion of an appropriation bill altering an appropriation figure, or striking down a condition imposed on the amount appropriated. We do not need to consider these opinions or the propositions they stand for because there is no question in this case that the governor neither altered an appropriation nor removed a contingency or condition on the amount appropriated.

Id. at 131, 237 N.W.2d at 916 (footnotes omitted).

Assume, for purposes of this example, that the governor implements the following objection to section XYZ of the appropriation bill:

Sec. XYZ Lien of Landlord. The provided in ss. 281.43 landlord has no right to a lien on the property of the tenant; the common-law right of a landlord to distrain for rent is abolished.

Although the governor deleted an important exception to the mandate of section XYZ, the governor would be assured that this action is constitutional since the remaining portions of section XYZ constitute a complete, workable law within the meaning of *Sundby*. Consequently, the effect of the analysis in *Sundby* is to endow the governor with an important legislative role to redraft appropriation bills submitted for the governor's signature by the use of selective deletions. In fact, the governor may have the power to object to conditions contained in a part of an appropriations bill not involving specific appropriations. *Sundby*, by implication, may have approved such action since the court only refused to decide the issues involving vetoes of conditions to parts of bills containing specific appropriations.⁸²

In the final analysis, the objective test adopted in *Sundby* and the corresponding increase in legislative power afforded the governor may operate to foster legislative conformity with the original purpose of the partial veto authority:

Its purpose was to prevent, if possible, the adoption of omnibus appropriation bills, logrolling, the practice of jumbling together in one act inconsistent subjects in order to force a passage by uniting minorities with different interests when the particular provisions could not pass on their separate merits, with riders of objectionable legislation attached to general appropriation bills in order to force the governor to veto the entire bill and thus stop the wheels of government or approve the obnoxious act.⁸³

To paraphrase the words of Alexander Hamilton cited at the outset of this article, the practical effect of the court's analysis in *Sundby* and the accompanying "propensity of the [executive] department to intrude upon the rights, and to

⁸² *Id.*

⁸³ *State ex rel. Martin v. Zimmerman*, 233 Wis. 442, 447-48, 289 N.W. 662, 664 (1940).

absorb the powers of the [legislature]" may be the most effective tool for eliminating the objectionable practice of logrolling so prevalent in appropriation legislation. The most effective vehicle for decreasing the legislative power of the governor under the *Sundby* analysis would be for the legislature to discontinue the practice of appending non-appropriation bills in appropriation legislation. This would accomplish the desired purpose of the drafters of article V, section 10, and correspondingly limit the governor's authority to redraft legislation through selective deletions of parts of non-appropriation bills contained in appropriation bills.

While the court's analysis in *Sundby* may serve to accomplish the desired purpose of the drafters of the Wisconsin Constitution, the court's most significant contribution is its adoption of the objective test. As mentioned at the outset, the analysis adopted by the court in *Sundby* presents an attractive alternative to the semantic device inherent in the strict construction analysis so prevalent in other jurisdictions. In effect, the governor is not presented with the troublesome task of deciding whether the effect of an objection to portions of an appropriation bill constitutes an "affirmative" or "negative" act. In the court's own words, "Every veto has both a negative and affirmative ring about it."⁸⁴ The principal advantage of the court's reaffirmation of the "complete workable law" analysis is that it affords predictability to the governor. Under this objective measure the governor can decide if a particular exercise of the veto authority is constitutional. If the remaining approved portions of the appropriation bill constitute a complete workable law, the governor is assured that his or her objections to the portions of the appropriation bill are a constitutional exercise of the veto authority.

The predictability and certainty which the *Sundby* analysis affords both the executive and legislative branches should serve to influence other jurisdictions to adopt this objective test when they are faced with similar challenges to the governor's exercise of the veto authority.

84. 71 Wis. 2d at 134, 237 N.W.2d at 918.

AEI LEGISLATIVE ANALYSES

*Balanced analyses of current proposals before the Congress, prepared with the
help of specialists in law, economics, and government*

Proposals for Line-Item Veto Authority

1984

98th Congress
2d Session

AMERICAN ENTERPRISE INSTITUTE
FOR PUBLIC POLICY RESEARCH
Washington and London

The legislative analysis program is funded in part by a grant from the Charles H. Culpeper Foundation, Inc.

ISBN 0-8447-0256-0
Legislative Analysis No. 41, 98th Congress
March 1984

CONTENTS

1	INTRODUCTION	1
2	BACKGROUND	2
	The Executive Veto	2
	Line-Item Veto Authority in the States	3
	Line-Item Veto Authority for the Federal Executive	4
	The Appropriations Process	5
3	PENDING PROPOSALS	8
	Bills and Resolutions Authorizing a Line-Item Veto of Appropriations	8
	Bills and Resolutions Authorizing a Line-Item Veto of Appropriations and Legislative Riders	10
4	ISSUES AND ARGUMENTS	11
	Issues Relating to the Separation of Powers	11
	Efficacy and Efficiency	16
	Other Issues	19
	NOTES TO TEXT	27

TABLES

1.	Presidential Vetoes: 1952-1983	3
2.	Proposals Introduced in the Ninety-eighth Congress to Grant the President Line-Item Veto Authority	9

1

INTRODUCTION

On January 13, 1984, President Reagan announced that he would ask the Congress for line-item veto authority. This authority would allow him to veto individual items of appropriations measures that he must now approve or reject in their entirety. Governors in forty-three states now have this power to veto or, in some states, to reduce spending passed by the legislature, and President Reagan used the device during his tenure as governor of California. In his State of the Union address on January 25, 1984, the president called the line-item veto "a powerful tool against wasteful or extravagant spending" and voiced his support of a constitutional amendment to authorize such a veto.

Although the passage of legislation authorizing a line-item veto or the approval of a constitutional amendment granting the president this power is not considered likely, this device is important in the context of the continuing discussions on reducing the federal deficit. As one possible tool in the array of alternatives put forward to bring the budget process under control, the line-item veto faces strong opposition from congressional leaders of both parties.

This analysis will present background information on the line-item veto and will summarize arguments for and against its adoption.

2

BACKGROUND

Before the American Revolution, the governors of the thirteen colonies could veto any legislation that came before them. Even if a piece of legislation was approved by the colonial governor, it was still subject to a veto by the king. A veto by either the governor or the king was absolute. It is understandable, therefore, that the framers of the Constitution were wary of the veto power and that its use was restricted by the possibility of a legislative override. This chapter presents background information on the use and purpose of the veto by the president and describes experience with the item veto in the states. It also describes the federal appropriations process, traces briefly the changes in that process, and describes the roles of the president and the Congress in determining levels of federal spending.

THE EXECUTIVE VETO

Delegates to the Constitutional Convention in Philadelphia in 1787 concluded only reluctantly that the executive should possess a limited veto authority (the "qualified negative"). The veto was intended to give the president the means to protect his office from congressional inroads and as "security against the enactment of improper laws."¹ The president was limited to approval or rejection of a bill in its entirety, and the Congress could override a presidential veto by a two-thirds majority of both the Senate and the House of Representatives. These two limitations on the veto power were part of the "original understanding that the veto would be used only rarely, and certainly not as a means of systematic policy control over the legislative branch, on matters constitutionally indifferent and not menacing the President's independence."² The question of giving the executive the power to veto only portions of a bill—the line-item veto—was not discussed at the Constitutional Convention.

Despite the fears of the framers of the Constitution, experience shows that in general presidents have not exercised their veto power extensively. One source states that all the presidents through Lyndon Johnson in 1966 used the regular veto power only 2,238 times and that "the average percentage of legislation vetoed by fourteen presidents from 1889 to 1968 was 2.5."³ The veto has been used more frequently during the twentieth century, but even the presidents who exercised this power most heavily vetoed only a small percentage of the bills submitted to them. Table 1 summarizes the use of the veto by the seven most recent presidents.

The use of the veto by state governors varies widely, and a recent nationwide

TABLE 1
PRESIDENTIAL VETOES, 1952-1983

President	Bills Passed	Vetoed ^a		Overrides	
		Number	As percentage of bills passed	Number	As percentage of regular vetoes
Eisenhower	3,724	73	2.0	2	2.7
Kennedy	1,093	12	1.1	0	0
Johnson	1,959	16	0.8	0	0
Nixon	1,698	24	1.4	5 ^b	20.8
Ford	923	43	4.7	12 ^c	25.5
Carter	1,275	13	1.0	2	15.4
Reagan ^d	707	15	2.1	3	20.0

a. This does not include pocket vetoes, since pocket vetoes are not subject to congressional override.

b. President Nixon exercised the pocket veto nineteen times. Although these vetoes were not subject to congressional override, two of the Nixon pocket vetoes were overruled by the courts. They are not included in these figures.

c. In a dispute with the Congress, four pocket vetoes by President Ford were found to be subject to congressional veto procedures. All four vetoes were overridden. These four vetoes are not included in the number-of-vetoes column. They are included in computing overrides.

d. Data for President Reagan include vetoes through the first session of the Ninety-eighth Congress (December 1983).

SOURCES: Bills passed: *Congressional Quarterly Almanac*, annual issues, 1953-1983; vetoes: Executive Clerk's Office, the White House.

accounting is not available.⁴ Although governors veto bills more frequently on average than does the president, the percentage of bills vetoed is still relatively low.⁵

The executive veto is a potent policy tool when seen in the context of how many vetoes are overridden by the legislatures, however. In the states, where a vote ranging from a simple majority of those elected (five states) to two-thirds of those elected (twenty-nine states)⁶ is required to override a governor's veto, an override is rare. According to Frank W. Prescott's 1947 data, only 22 of 1,253 vetoes were overridden in that year. In some states, the veto is almost absolute. The presidential veto is also relatively immune to congressional reversal. From 1945 to 1970, only 16 of 493 vetoes were overridden.⁷ As table 1 shows, recent presidents have faced stronger opposition to their vetoes.

LINE-ITEM VETO AUTHORITY IN THE STATES

Forty-three states have authorized a line-item veto for the state executive. Georgia and Texas were the first two states to incorporate the item veto in their constitu-

tions, and "since the Civil War, with a single exception, every new state admitted to the Union and many of the older states have granted their governors this power."⁸

In eleven states line-item veto authority has been expanded to allow the governor to reduce as well as delete items in appropriations bills.⁹ Four states allow the governor to recommend amendments to legislative bills. In the states of Washington and South Carolina the governor is empowered to veto items in any bill submitted to him, not just appropriations bills.¹⁰ Among the states that do not authorize the line-item veto, the governor of West Virginia may not veto the budget bill, and the governor of North Carolina has no veto power at all. In Hawaii the governor may reduce only items in appropriations for the executive branch. He cannot reduce or veto items in the legislative or judicial budgets, but he can veto the entire budget.

Provisions for legislative override of a line-item veto also vary among states. Thirty-eight states require a two-thirds or a three-fifths majority, while a few states require a majority of those elected.¹¹

In some states where the governor has a very strong role in spending decisions and the legislature has limited power to change the budget, the budget process has reduced the use of the veto.¹² In Nebraska the legislature may not appropriate funds in excess of the governor's budget request unless by a three-fifths vote, and a majority vote is required to reject or decrease such items. In New York the legislature may reduce or delete items or add separate items of expenditure in the governor's budget but may not increase item appropriations above his recommendations. In Maryland the legislature may decrease but not increase budget items, except appropriations for the legislative or judicial branches.

LINE-ITEM VETO AUTHORITY FOR THE FEDERAL EXECUTIVE

Proposals to grant the president line-item veto power have been regularly offered in the Congress. In his statement on a bill (S.J.Res. 26) introduced during the Ninety-eighth Congress proposing a constitutional amendment granting line-item veto authority, Sen. Alan Dixon (D-Ill.) noted that over 140 line-item veto proposals had been introduced in Congress.¹³ Sen. Harry F. Byrd (D-Va.) stated at a 1954 hearing that the item veto "has been under consideration at various times for a hundred years. It has been recommended by Presidents Grant, Hayes, Arthur, Wilson, and Roosevelt."¹⁴

In 1861 the Constitution of the Confederate States granted the Confederate president line-item veto authority over appropriations, but the veto was never exercised. Since that time, forty-three states have adopted some form of the line-item veto as part of their state constitutions.

The line-item veto has received support from most recent presidents. One source notes that "every President with one exception during the twentieth century that has expressed himself on the question has requested the item veto."¹⁵

President Reagan has voiced support for an item veto, but the Reagan administration has not yet submitted its own legislative proposal to authorize an item veto or formally endorsed any of the measures introduced thus far in the Ninety-eighth Congress.

THE APPROPRIATIONS PROCESS

The appropriations committees of the House and the Senate consider and report bills that authorize federal agencies to incur obligations that will result in immediate or future outlays. In considering appropriation levels, the appropriations committees take into account the president's budget requests and the appropriation ceilings set in the program authorization bills. Program authorization bills are considered and reported by the standing committees of Congress. Appropriations—also called budget authority—are usually less than the ceilings set in authorization bills, although they can be for the full amount authorized.

Appropriations for a fiscal year are contained in thirteen separate bills.

Regular Appropriations Bills for Departments and Agencies

Agriculture—	Interior
Commerce, Justice, State, the judiciary, and related agencies	Labor/Health and Human Services/ Education
Defense	Legislative branch
District of Columbia	Military construction
Energy and water development	Transportation
Foreign operations	Treasury/Postal Service
Housing and Urban Development/ independent agencies	

SOURCE: *Congressional Quarterly Almanac 1981* (Washington, D.C.: Congressional Quarterly, 1982), p. 244.

The House acts first on these bills, which are then subject to Senate action and presidential approval. If some of the bills are not passed by the beginning of the fiscal year, unfunded programs and agencies are funded in a continuing resolution. The continuing resolution sets overall funding levels for some specified time period that can vary from a few days to an entire fiscal year. Funding may be set at the previous year's level (the "current rate"), at the level set in the House bill (if the Senate has not acted), or at the lower of the House or the Senate bill (if no conference agreement has been reached). Although funding for some programs may be for a specific dollar amount, funding for most agencies and departments in a continuing resolution is set at one of the three general levels mentioned above.

After submitting his budget requests to the Congress, the president has fulfilled his formal role in the appropriations process. Although he may attempt to influence Congress through informal channels—discussions with appropriations

subcommittee leaders, for example—his legal authority over the process is limited to approving or rejecting the final bills passed by the legislature. The appropriations bills, as listed above, contain detailed funding for programs in the department or agency. These “line items” would be subject to presidential approval or disapproval under the pending item veto proposals. If funding is contained in an omnibus continuing resolution, however, spending for individual proposals is not generally itemized. Items funded in a lump sum in a continuing resolution would not be vulnerable to the proposed item veto without clear language voicing this intention.

Large parts of the federal budget are not subject to the annual appropriations process. Authority for payment of interest on the national debt and social security benefits is established in permanent law. Outlays for entitlement programs, while nominally subject to appropriations, are determined by benefit levels and eligibility criteria in current law, and appropriation levels for entitlement programs cannot be reduced without legislative changes in one of these two determinants. Appropriations for a given year often include outlays for contracts concluded in previous years over which the Congress has no discretionary control. Estimates of the proportion of the federal budget subject to the direct control of the annual appropriations process range from 5 to 25 percent.¹⁶

Changes in the Budget/Appropriations Process. Beginning in the 1950s Congress became increasingly paralyzed by the budget process. The paralysis peaked between 1972 and 1974 when not one appropriation measure was enacted on time.¹⁷ In response to this growing loss of control and to related concerns raised by the Watergate period, Congress enacted the Congressional Budget and Impoundment Control Act of 1974 (P.L. 93-344). The 1974 budget act moved the start of the federal fiscal year from July 1 to October 1, giving legislators an additional three months to complete action on spending bills. It also reformed the budget mechanism into a two-step process: a first budget resolution that sets nonbinding estimates on overall spending and a second budget resolution that establishes binding totals for the fiscal year. The second budget resolution puts a ceiling on overall spending—spending that in earlier years had been dealt with in separate appropriations bills, with little control over overall totals. Action on appropriations cannot begin until after passage of the first budget resolution. Spending in the individual bills is tailored to meet specifications in the first resolution. A “reconciliation” process was also added to accommodate changing priorities by forcing congressional committees to reduce spending or raise taxes in programs under their jurisdictions. The binding totals set in the second budget resolution can be exceeded only by the passage of a third budget resolution.

Other changes implemented in 1974 restrict the president’s ability to impound funds authorized by the Congress. The new impoundment procedures allow the president either to defer or to rescind budget authority, subject to congressional review and reversal. Budget deferrals—actions to delay expenditures—may continue in effect unless disapproved by either house of Congress.¹⁸

Rescissions—the cancellation of congressionally authorized funds—must be approved by the Congress within forty-five days of notification or the funds must be released. The president must send a special message to Congress notifying the members that he intends to defer or rescind funds.

Although intended to eliminate political abuse of impoundment, where a president could cut funds to impose his legislative priorities on an unwilling Congress, the impoundment procedures of the 1974 budget act have substantially limited the exercise of presidential discretion in program spending. The impact of the 1974 law is still being evaluated, but the act seems to have had little lasting effect on improving the timely completion of appropriations bills or on reducing overall spending levels.

3

PENDING PROPOSALS

Although fourteen bills and joint resolutions (as of early March 1984) authorizing a line-item veto have been introduced in the Ninety-eighth Congress, the proposals can be summarized briefly in two general categories. One set of proposals would authorize an item veto of appropriation items only. The second group would authorize a veto of both appropriation items and legislative riders on appropriations bills. Table 2 summarizes the main features of the fourteen proposals introduced thus far.

BILLS AND RESOLUTIONS AUTHORIZING A LINE-ITEM VETO OF
APPROPRIATIONS

Nine bills and resolutions introduced in the Ninety-eighth Congress would authorize a presidential line-item veto of appropriations items. The bills and resolutions were introduced by Rep. Henry J. Hyde (R-Ill.), Rep. Douglas K. Bereuter (R-Nebr.), Rep. Gerald B. Solomon (R-N.Y.), Rep. George W. Gekas (R-Pa.), Rep. Bill Green (R-N.Y.), Rep. Jerry M. Patterson (D-Calif.), Sen. Alan J. Dixon, and Sen. Mack Mattingly (R-Ga.). The seven resolutions would amend the Constitution to provide the line-item veto authority: H.J.Res. 391 (Representative Hyde), S.J.Res. 26 (Senator Dixon), S.J.Res. 178 (Senator Mattingly), H.J.Res. 464 (Representative Solomon), H.J.Res. 448 (Representative Bereuter), H.J.Res. 399 (Representative Gekas), and H.J.Res. 436 (Representative Green). The Mattingly bill (S. 1921) and the Patterson bill (H.R. 4774) would provide line-item veto authority by an act of Congress. None of these bills or resolutions allows a veto of legislative riders. All except the Solomon and Patterson proposals restrict the line-item veto to appropriations for executive branch agencies; the president would not be authorized to veto items in appropriation bills for the legislative branch or the judicial branch.

Senator Dixon's resolution and Representative Gekas's resolution would allow Congress to override a line-item veto by a simple majority. The others would require a two-thirds majority for override. The Dixon, Bereuter, and Gekas resolutions would also allow the president to reduce items in appropriations bills.

The Solomon resolution (H.J.Res. 464) is unique in that it would prohibit the use of the line-item veto on any item of appropriations for the national defense. The resolution introduced by Representative Green would authorize either house of Congress to approve or disapprove executive actions, without presentment to

TABLE 2
PROPOSALS INTRODUCED IN THE NINETY-EIGHTH CONGRESS TO GRANT
THE PRESIDENT LINE-ITEM VETO AUTHORITY

<i>Bill or Resolution Number and Sponsor</i>	<i>Line-Item Veto of Appropria- tions Only</i>	<i>Authority to Reduce Appropriations</i>	<i>Line-Item Veto of Appropria- tions and Legis- lative Riders</i>	<i>No Line-Item Veto Authority over Appropriations for Legislative Branch or Judicial Branch</i>
H.J.Res. 10 (Bennett)	—	—	x	—
H.J.Res. 52 (Archer)	—	—	x	—
H.J.Res. 357 (Kemp)	—	—	x	—
H.J.Res. 391 (Hyde)	x	—	—	x
H.J.Res. 399 ^a (Gekas)	x	x	—	x
H.J.Res. 404 (Archer)	—	—	x	x
H.J.Res. 436 ^b (Green)	x	—	—	x
H.J.Res. 448 (Bereuter)	x	x	—	x
H.J.Res. 464 (Solomon)	x ^c	—	—	—
H.R. 470 ^d (Archer)	—	—	x	—
H.R. 4774 ^d (Patterson)	x	—	—	—
S.J.Res. 26 ^a (Dixon)	x	x	—	x
S.J.Res. 178 (Mattingly)	x	—	—	x
S. 1921 ^d (Mattingly)	x	—	—	x

a. Would allow a congressional override of a presidential line-item veto by a simple majority rather than a constitutional majority.

b. Would authorize a legislative veto.

c. Would prohibit exercise of the line-item veto on national defense bills.

d. Would authorize the line-item veto by act of Congress rather than by amendment of the Constitution.

the president. This provision would reestablish the legislative veto, which was ruled unconstitutional in the *Chadha* case.

The Patterson bill (H.R. 4774) would grant the president the authority to rescind items of appropriations or to line-item veto such items. Before rescinding funds, the president would be required to send a report to both houses of Congress. The report would identify the item to be rescinded; explain why it should be rescinded; estimate the fiscal, economic, and budgetary impact of the proposed rescission; and explain the circumstances affecting the decision to rescind funds. The rescission would become effective unless Congress passed legislation disapproving the rescission. The authority would expire one year from the date of enactment.

BILLS AND RESOLUTIONS AUTHORIZING A LINE-ITEM VETO OF APPROPRIATIONS AND LEGISLATIVE RIDERS

Five bills and resolutions introduced in the Ninety-eighth Congress would authorize a line-item veto for the president that would allow him to veto both appropriations items and legislative riders. The resolutions were introduced by Rep. Charles E. Bennett (D-Fla.), Rep. Bill Archer (R-Tex.), and Rep. Jack F. Kemp (R-N.Y.). The Kemp resolution (H.J.Res. 357), the Bennett resolution (H.J.Res. 10), and the two Archer resolutions (H.J.Res. 404 and H.J.Res. 52) would amend the Constitution to authorize the line-item veto. The bill introduced by Representative Archer (H.R. 470) would grant the authority by an act of Congress. All the proposals would allow Congress to override a veto by a two-thirds majority.

4

ISSUES AND ARGUMENTS

Arguments for and against the adoption of the line-item veto can be divided roughly into two categories: issues relating to the balance of power between the executive branch and the legislative branch and arguments on the efficacy of the line-item veto as a way of reducing deficits.

ISSUES RELATING TO THE SEPARATION OF POWERS

The system of checks and balances delineated in the Constitution is sometimes described as "delicate." The degree of tension between the Congress and the executive branch is nowhere more evident than in the area of spending policy. How does the congressional power over the purse strings affect presidential prerogatives in the operation of executive branch agencies and programs? Conversely, how do presidential policy decisions infringe legislative responsibility for spending? Would line-item veto authority enhance the powers of the executive at the expense of the legislature?

Presidential Power. Proponents of the item veto claim that the power of the president to veto appropriations bills has been seriously eroded. Congressional handling of the appropriations process has limited presidential veto power in two ways: (1) the inclusion of legislative riders in a funding measure forces the president to accept a bill with objectionable features or to reject the bill in its entirety, thus jeopardizing the funding of vital programs; and (2) the practice of passing appropriations very late in the session forces the president to accept a measure or to risk shutting down essential functions. In addition, the thirteen regular appropriations bills fund several agencies or departments in one bill, making it impossible for the president to pinpoint spending he would prefer to cut (see list of appropriations bills).

An article by Henry Hazlitt in the *Wall Street Journal* charges that Congress "has perfected the device of throwing in pork-barrel, log-rolling and other vote-buying appropriations with those that the president needs to carry on the government."¹⁹ According to Russell M. Ross, professor of political science at the University of Iowa, and Fred Schwengel, president of the U.S. Capitol Historical Society,

the President, in fact, has little or no choice. Appropriation bills almost invariably are composed of items necessary for the public welfare as

well as items not necessarily in the national interest. The President may "choose" to accept the bill in its entirety thus approving the undesirable and unnecessary items and the wasteful expenditures of funds, and assenting to any attached legislative "riders," or he may reject the bill in its entirety thus risking delay if not discontinuance of necessary functions and work on needed projects.²⁰

Ross and Schwengel conclude that the item veto authority would "do little more than restore to the President his rightful power and take from Congress powers which it has usurped for itself."²¹

Opponents of the item veto contend that the present executive veto is a potent tool of public policy. Sen. Mark Hatfield (R-Oreg.) notes that "the President has been very effective in using his current veto power in getting Congress to keep down the size of our appropriations bills."²² The use of the veto or the threat of a veto is sufficient means of expressing displeasure with congressional measures. To give the president the power to veto specific budget items, according to Sen. Carl Levin (D-Mich.), would free the president from "the need to compromise as he participates in the budget making process" and would give him "a preeminent, if not unassailable, position in the budget process."²³ Rep. Mickey Edwards (R-Okla.) asserts that the line-item veto "would concentrate substantial new powers in that most concentrated of power bases, the presidency."²⁴ Representative Edwards notes that this "acquiescence to the imperial presidency . . . threatens the foundation of our form of government—a system carefully designed to balance powers and limit central authority."²⁵

Proponents of the item veto deny that it would enhance presidential power to any appreciable extent. They cite an article by the late Sen. Arthur H. Vandenberg (R-Mich.) in which he summarizes this view:

The item veto does not give the President one single, additional, affirmative power. He cannot start anything as a result. He can only stop something long enough to focus the attention of the country on it, and long enough to force two-thirds of the House and the Senate to agree to it in spite of him and his reasons, if they should persist in their adverse judgments. Its only harm, if any, would lie in the temporary delay while Congress and the country stop, look, and listen. I have never known any lives to be lost by obedience to this familiar injunction. There will be no governmental casualties under similar circumstances.²⁶

If the item veto did increase presidential power vis-à-vis Congress, this, it is claimed, would still not offset the serious erosion of presidential power that has taken place in recent decades.

Opponents also note that, if the line-item veto were authorized, the president alone would decide which pork-barrel projects would be funded. He could delete funding for projects in some districts, while allowing funding for similar projects in other districts to remain. The potential for rewarding or punishing states or members of Congress through the appropriations process could lead to political

blackmail. Sen. Russell Long (D-La.) noted that the president could hold individual line items hostage and put members of Congress "in a position that if they did not vote with the President on other matters totally irrelevant to what is within that appropriation bill, they would then see their projects vetoed as individual line items."²⁷ Opponents are particularly concerned in the case of a president in his second term who is no longer subject to the decision of the electorate. A second-term president with a lopsided majority in the Congress could be almost immune to a veto override. Those who favor the line-item veto respond that members of Congress must justify their actions to the voters at regular intervals and that reelection prospects would be severely damaged by behavior that the voters perceive as irresponsible and not in the national interest.

The appropriations process, say advocates of the line-item veto, is out of control in the Congress, and the existing presidential veto power can do little to restrain spending. Funding for activities of the federal government is contained in thirteen annual appropriations bills. Since passage of the 1974 budget reform act, Congress has been unable to clear all thirteen bills before the start of the fiscal year. (In 1978 all thirteen bills were cleared before adjournment.) Departments and agencies whose appropriations have not been passed are funded in an omnibus bill, and the bill is usually passed at the last possible moment. The president is therefore reluctant to veto the measure—even if it contains funding that substantially exceeds budget estimates—because of the costly shutdown of government operations that would occur if he fails to approve it. A line-item veto, claim proponents, would discourage last-minute passage of controversial appropriations in an omnibus bill because the president would have the freedom to delete or reduce objectionable items and avoid a total stoppage in government affairs.

Opponents, on the other hand, argue that the president has indeed been willing to use his veto power over late-session appropriations and that Congress, albeit reluctantly, has reworked the measures to gain his approval. In 1982 President Reagan vetoed two omnibus measures, even though the vetoes caused a temporary shutdown of some government offices. The problem is not that the present veto power of the executive is inadequate. Rather, say these opponents, the appropriations bills have become so massive that the existing congressional appropriations process is unable to handle them in the course of a single congressional session. As Sen. Pete Domenici (R-N.Mex.) has noted, "the time is here for us to take a real look at being more orderly and reasonable with our processes so we do not need this kind of amendment working its way through the U.S. Senate and through the Congress. I am sure it would not have any support but for the fact that we have let our process get out of control."²⁸

Congressional Power. Opponents of the line-item veto contend that this veto would tip the scales of the balance of power strongly toward the executive, essentially granting him legislative power and increasing his political leverage. Supporters counter that the existence of the line-item veto would force Congress to

make more responsible spending decisions and that any use of the line-item veto undertaken for purely political reasons would be rare and, in any case, could be overridden by the Congress.

Article I of the Constitution gives Congress the responsibility to make decisions on public spending. The line-item veto, say opponents, would weaken this power substantially, because the president would in effect have the final say on spending. In addition to the danger of losing its power over the purse strings, members of Congress could avoid public responsibility for the loss of spending for projects favored by their constituents. Thus, members of Congress could trade votes (logrolling) to fund district projects not in the public interest that do, however, benefit their constituents (pork-barrel items). If the president were to veto the item, the congressman could honestly tell his constituents that he had fought for its inclusion. Thus, as Sen. Lawton Chiles (D-Fla.) commented, Congress could "have it both ways":

We can be for a project that looks mighty good back home, knowing all the while that someone in OMB will flag it and tell the President, "You better veto that." We will not have to worry. The President will take the heat. We will get the credit and the chance to answer mail both ways. A Member can say, "I added the money for this valuable project I knew you wanted, but I am sorry the President vetoed it."²⁹

Supporters of the line-item veto argue that Congress has failed to hold the line on spending and that the line-item veto would be an incentive to adopt responsible spending programs. Sen. Robert Dole (R-Kans.) commented in this regard: "We have to find some way to restrain spending. If we are not willing to do it, we should be willing to give this authority to the President, whoever he might be, Democrat or Republican, if he is willing to take the heat."³⁰

Those who favor the line-item veto reject the notion that the item veto could be used as a political weapon and believe that Congress can and should use its override power if such an abuse occurs. Senator Dixon cited the experience in the states to support his argument in favor of the line-item veto: "Frankly, most times when the chief executive vetoes in these States, it sticks. When he or she is wrong, it does not. . . . I would argue that when the President vetoes a line item and public opinion supports overriding, we would override."³¹ Supporters also note that the veto power is rarely exercised. One source calculates that the average percentage of legislation vetoed between 1889 and 1968 was only 2.5 percent and concludes that the "full veto is not . . . a power used routinely."³² An older study of the executive veto in the states found that amounts removed from state budgets by item veto were small, "averaging from one to three per cent of total state budgets."³³

Opponents of the line-item veto respond that although the present veto power is rarely exercised, congressional override of a presidential veto practically never occurs. Since an override requires a two-thirds majority, whereas passage of

legislation is by simple majority, Congress can seldom muster the additional votes needed to override. Ross and Schwengel note that only ninety-two presidential vetoes were overridden between 1787 and 1980.³⁴ Charles L. Black, Jr., Sterling Professor of Law at Yale Law School, estimates that only 5 percent of all bills vetoed through the administration of Franklin Roosevelt were overridden.³⁵ Proponents respond that in recent years Congress has been able to override presidential vetoes quite regularly (see table 1).

The Congress is charged in the Constitution with setting funding levels for government programs. If the president is able to delete program funding and close down programs to which he objects, he would be exercising a legislative power, say those who oppose the line-item veto. A report from the House Budget Committee notes: "Extending the President's veto power beyond what the Constitution now provides would allow the President largely to substitute his judgment for that of a majority of the Congress on specific policy items."³⁶

Proponents point out that if a line-item veto is sustained, the program lacks widespread popular support and should be scrapped. If the Congress feels strongly that the program is necessary and worthwhile, it will assert its will by overriding the veto. Proponents also note that both the House and the Senate have rules that legislation changing existing law shall not be attached to appropriations bills. If Congress, however, adhered to its own rules governing legislative riders, there would be no riders on appropriations that would be subject to presidential item vetoes. The "Christmas tree" spending bills sent to the president laden with special interest legislation, say proponents of the line-item veto, are fair game for a president bent on reducing spending. Five of the bills under consideration would allow the president to veto legislative riders in appropriations bills.

Small states, say opponents, would be particularly vulnerable to punitive use of the line-item veto. While the small states have an equal say in the Senate, a state with a single representative would have more difficulty gathering support for an override of a veto that adversely affected its population:

It is inconceivable that two-thirds of the Members of both Houses would vote to override the veto of a small item for some post office in a community which to them is merely a point on the map in some State hundreds of miles away. Only on rare occasions has Congress chosen to override the President even when he has vetoed an entire bill of general interest to the country at large. To expect two-thirds of the Members of each House of Congress to take up their cudgels and fight for an appropriation of interest to only one small locality is to ignore facts in the great game of politics.³⁷

Proponents deny that this would be the case, citing again the force of public opinion that would be brought to bear to salvage worthwhile items. The president could not afford to alienate too many members of Congress without jeopardizing his position in veto confrontations and on legislation that he is requesting.

EFFICACY AND EFFICIENCY

In addition to constitutional questions on the effect of the line-item veto on the relative powers of Congress and the president, another significant issue in the discussion of the line-item veto is its practical implementation. Can the line-item veto reduce federal deficit spending? Would it make the congressional appropriations process more efficient?

Reducing the Deficit. Proponents and opponents of the line-item veto differ in their assessments of the efficacy of this device in reducing the federal deficit.

Opponents claim that the line-item veto would have little effect on federal spending. The "controllable" costs of operating the federal government are a smaller proportion of the federal budget today than they were ten years ago, and the proportion of these costs to total outlays continues to shrink. The costs of entitlement programs—social security, Medicaid, welfare benefits, and retirement programs—cannot be controlled without legislative changes in eligibility or benefit levels. The cost of these programs is determined by the size of the eligible population and the level of benefits, and it cannot be reduced arbitrarily. A report prepared for the House Budget Committee estimates that the following amounts would be exempt from the line-item veto in fiscal year 1985 under preliminary Congressional Budget Office (CBO) projections:³⁸

Social security	\$189 billion
Net interest payments	116 billion
Medicare and Medicaid	98 billion
Other mandatory programs	92 billion
Prior year commitments:	
Defense	110 billion
Domestic	78 billion
Total	\$683 billion

Of the current estimated budget of \$925 billion, an additional \$155 billion in defense spending is unlikely to be vetoed, leaving only \$86 billion—approximately 9 percent of FY 1985 spending—in nondefense discretionary spending as the likely target for cuts.³⁹

Sen. Lawton Chiles notes that only 18 percent of the budget is in appropriations: "The appropriations are not the sources of money trouble. The problem is in the entitlement programs. The problem is in the interest we are paying on the debt, and in taxes or tax expenditures."⁴⁰ A *Washington Post* article puts the percentage of the budget subject to the line-item veto at between 12 and 15 percent. In addition to excluding the entitlement programs and interest on the national debt, the veto is unlikely to be used to cut defense spending.⁴¹ In the same article, Reagan administration officials noted, however, "that a future president might well use the line-item veto to reverse Reagan increases in the defense

sector."⁴² This possibility concerns Rep. Mickey Edwards, who notes that a Democratic president

would not be likely to veto an entire defense appropriations bill, and would thus be somewhat bound by congressional determination to proceed with systems such as the B-1, [but] the power to accept most of the appropriation but single out specific items for veto could . . . eliminate defense items crucial to the national security.⁴³

The bill introduced by Representative Solomon would address such concerns by prohibiting a line-item veto of funds for national defense.

Data released by the CBO show that net interest in fiscal year 1984 will total \$105 billion: "Of total fiscal 1984 budget outlays, CBO estimated non-defense discretionary spending—that is, spending for all programs other than defense—will make up only slightly over 18 percent. If defense is added, total discretionary spending amounts to 45.7 percent of fiscal 1984 outlays."⁴⁴

Sen. Don Nickles (R-Okla.) disagrees that the Congress has little power over national spending:

In fiscal year 1983, the President sent to the Congress requests for appropriations of \$497.9 billion, the Congress approved \$510.8 billion, an increase of \$12.9 billion. If the President had the power to reject portions of these appropriations bills sent him, we may have seen the fiscal year 1983 deficit reduced by a substantial amount.⁴⁵

Proponents also note that the president, unlike the Congress, is elected by a national constituency to pursue the national interest. Given the line-item veto, the president could cut the "costly and/or questionable projects" that members of Congress fund "by inserting a well-placed but little-noticed phrase or two in an appropriations bill to shield the project from budget cuts."⁴⁶ The president is in a position to weigh the importance of regional or local initiatives against the overriding national interest.

Advocates of the line-item veto point to the experience of the states to support their claims that the line-item veto can have an important impact on spending. This impact can be indirect, in that "the governor's influence and the ever-present threat or fear of a veto has caused many bills to be withheld, withdrawn, modified or to die in committee."⁴⁷ The line-item veto can also have a direct effect on state spending. In a 1954 Senate hearing on the item veto, Rep. Charles E. Bennett listed responses from governors who had been asked about savings achieved through the veto. The amounts vetoed varied from under \$100,000 to over \$51 million. Representative Bennett concluded that "if it saved money for the States it can save money for the Federal Government. It may not save billions; but it will save millions, and I am ready to start right there."⁴⁸ More recent data from the states show that governors have vetoed or reduced appropriations to achieve substantial savings. In Illinois in 1983, Governor Thompson vetoed \$174.7 mil-

lion and reduced appropriations by an additional \$26 million. Of fifty-eight departments and agencies, twenty-four had their budgets vetoed or cut.⁴⁹ In 1983 the governor of California achieved savings of approximately \$1.2 billion—cuts equal to more than 4 percent of the state budget.⁵⁰ Governor Thornburg of Pennsylvania used the line-item veto five times in 1983 to reduce spending by \$1.15 billion (12 percent of the budget).⁵¹

Opponents of the veto claim that comparing the state experience with the federal situation is invalid. They note that state legislatures meet less often than the Congress. As a result, the executive budget is considerably more important as a spending plan, and the role of the legislature has declined commensurately. Moreover, most states require a balanced budget, and experience has shown that "piecemeal reductions [are] inadequate as over-all devices of control."⁵² Critics also note that the item veto "was adopted to prevent unconstitutional or improper appropriations, rather than to provide a systematic check upon excess legislative grants of money. . . . More modern weapons are demanded to meet irresponsible mass attacks upon the public treasury."⁵³ Those who oppose the line-item veto point out that although the dollar amounts vetoed by the state governors may sound impressive, the actual percentage cuts are quite small. The amount vetoed by the governor of Illinois totaled just under 2 percent of appropriations, and cuts in Michigan were less than 0.0001 percent of the budget. Opponents also note that drastic cuts such as those undertaken in Pennsylvania are unlikely to be sustained by the legislature. Over \$1 billion of the funds vetoed by Governor Thornburg was restored by the legislature. Sen. Alan Dixon responds that the line-item veto in Illinois "saves billions and billions of dollars. On the basis of what it did in Illinois last year translated to what it could do for the federal budget, the savings to taxpayers this year, if the president had line-item veto power, would be between \$25 billion and \$30 billion."⁵⁴

Efficiency in the Appropriations Process. Most members of Congress admit that the process of setting spending levels for the federal government is in disarray. Some blame the inefficiency on the increasing complexity of federal programs and the inability of a single member of Congress to grasp the intricacies of all the spending bills. Others note that the legislators have brought the problem on themselves by needlessly complicating spending bills with unrelated legislative riders. Proponents of the line-item veto argue that it can bring order to the appropriations process by simplifying spending bills and discouraging nongermane riders. Opponents respond that the inadequacies of the existing system should not be improved upon by involving the executive branch in the processes of the legislature.

The item veto, say its proponents, would pressure the Congress to focus on spending levels in appropriations bills rather than on legislative riders. The elimination of riders on appropriations bills would be a step toward fiscal responsibility in the Congress and "would enable Congress to enact the corrective legislation so vital to regaining control of Federal spending."⁵⁵ Senator Mattingly notes that

Congress has been unsuccessful in reforming its budget process and that the line-item veto would be "far more effective in dealing with the budget nightmare than the current ineffective tools available to Congress."⁵⁶ Sen. Robert Dole agrees that the item veto would "reduce the incentive to attach riders to appropriations bills, and increase the efficiency of Congressional procedures."⁵⁷ He notes that "the frequent impasses over supplemental appropriations and continuing resolutions could be avoided with a line item veto in effect."⁵⁸

Sen. John Stennis (D-Miss.), an opponent of the line-item veto, disagrees that this device could streamline the appropriations process: "There is nothing you can do that will really tear up and cast asunder the impact, the influence, and the power of the appropriations committees than to pass an amendment like this line item veto and let it become law."⁵⁹ Sen. Bennett Johnston (D-La.) argues that the veto "would almost make Congress superfluous when it came to appropriation matters."⁶⁰

The report of the President's Private Sector Survey on Cost Control, *The Cost of Congressional Encroachment*, came out strongly in favor of item veto authority, calling it "a constructive element that could lead to a significant reduction in management ineffectiveness." The report notes that

in the 1960s it was possible to tolerate whatever inefficiency . . . legislative riders and similar actions introduced into administrative matters simply because the resulting budget deficits averaged a "manageable" \$6 billion a year. Now, however, the country is facing deficits approaching \$200 billion annually. In the equivalent circumstances, a private sector enterprise would take drastic steps to tighten its belt, eliminating all systematic inefficiencies in its authorization, management and operating practices. . . . Implementing an item veto is one such decisive action that the Federal Government needs to take in order to mitigate an inherent weakness in the political process—and to enable the Federal Government to optimize the use of the nation's human and capital resources.⁶¹

OTHER ISSUES

In addition to arguments about the effect of the line-item veto on the balance of power and about the possible gains in efficiency, several related issues are often raised in the debate over the item veto.

The Need for a Constitutional Amendment. Several of the legislative proposals for the line-item veto are present in two types of bills: one type would set in motion the process for approving an amendment to the Constitution; the second type would authorize the line-item veto legislatively. Most proponents agree that a constitutional amendment is necessary to expand the veto power granted to the president in Article 1, Section 7, of the Constitution. But those who favor statutory enactment of an item veto note that such legislation could be passed more quickly, thus hastening the day when the item veto could be put into effect.

Disagreement between those who favor statutory enactment of an item veto and those who favor a constitutional amendment centers on the ambiguity of the term "bill" as used in the Constitution. Jay Shampansky, in a study for the Congressional Research Service, summarizes what is considered the most extreme interpretation of the term. Some assert

that when the framers of the Constitution used the term "bill," they meant a measure relating to only one individual item. Thus, the argument goes, the framers intended for the President to be able to review each provision of law passed by the Congress, and the President's power to do so should not be restricted merely by Congress' practice of packaging in one bill numerous unrelated items.⁶²

Using this definition, some would claim that the president is already empowered to veto appropriations items.

Proponents of the statutory enactment approach argue that Congress can stipulate that each item in appropriations bills be considered a separate bill for purposes of presidential vetoes. Those who support this view note that "if a statute were enacted and the experience of the Congress and the country under that statute was unsatisfactory or if you had Presidents who abused that power and that authority, Congress then could by very simple means or by the ordinary means repeal the statute."⁶³

Most proponents of the line-item veto reject the idea that Congress can legislate this authority:

The power of Congress to grant the President the privilege of vetoing items of an appropriation bill is certainly nowhere expressed in the Constitution, nor is it necessary and proper for carrying into execution the clearly expressed limited veto power granted the President in the Constitution. . . . Congress manifestly is not permitted to abdicate or to transfer its essential legislative functions nor is it permitted to give to the President an unlimited authority to determine policy.⁶⁴

They agree that there is nothing in the debates at the Constitutional Convention to support the view that the term "bill" can be construed to relate to only one item: "Whatever may have been the framers' unarticulated and perhaps unexamined assumptions, they can be reconstructed at present only by speculation. In the absence of any clear intent to convey a more limited meaning by the use of the word 'bill,' the issue of its original content must remain open."⁶⁵ Since the meaning of "bill" is not specified in the Constitution, Congress, it is argued, cannot legally define this term in its rules of proceedings.⁶⁶ Amending the Constitution, although a more lengthy and cumbersome procedure, is the only legally acceptable means of granting the president line-item veto authority.

Comparison with State Experience. Some critics of the line-item veto contend that successful state experience with the veto is not a valid guide for the national government. Most states have a constitutional or statutory limitation on state

deficits. In thirty-three states the executive budget must balance expenditures with revenues; in thirty-seven states and the District of Columbia legislative appropriations must balance these two sides of the budget ledger.⁶⁷ In addition, eighteen states have adopted tax and expenditure limitations that use a formula "tying costs to ability of . . . citizens to pay taxes."⁶⁸ The item veto, it is claimed, is not an important tool of fiscal management in the states where budget deficits are prohibited.

Supporters of the line-item veto respond that, even within a balanced budget, the threat of an item veto can enforce spending priorities by focusing public attention on specific issues.

The most frequently heard argument used to discount the comparison between state and federal budgets is that "the federal budget is fundamentally unlike state budgets. It is fundamentally less susceptible to control by vetoes, item or otherwise."⁶⁹ In attacking this view of the federal budget, a *Wall Street Journal* editorial proposes that Congress act to change the relevant laws if it is serious about restraining spending:

The "current law" that makes spending "nondiscretionary" or "uncontrollable" was, of course, not a law handed down on Mount Sinai. Congress passed these laws, and the Constitution says Congress can change them. It is both repulsive and immoral for the legislators of this or any government to say that programs they enacted into law *must* spend hundreds of billions of the public's money every year because programs are "uncontrollable." This is the public morality of Marie Antoinette.⁷⁰

Line-Item Veto Authority to Reduce Appropriations. Several of the bills under consideration would authorize the president to veto or reduce appropriations.

Those who favor giving the president the authority to reduce appropriations claim that this power is necessary to a meaningful exercise of the line-item veto:

In the Federal Government it is rare that Congress adds a separate item of appropriation; rather the normal practice is to increase the amount of an appropriation instead of adding a new appropriation. The increase may not even require any change in the language of the bill. This type of situation . . . coupled with the practice of lumping expenditures for a number of functions into one appropriation suggests the need for an item veto authority which permits the President to reduce, as well as delete, specific appropriation items.⁷¹

Reducing lump-sum appropriations across the board would force Congress to reconsider each program separately on its own merits. Congress could then choose to accept an across-the-board cut in all programs in the appropriation or to delete some individual programs and restore full funding to the others. In either case, say proponents, legislators would have to state their spending priorities publicly and accept responsibility for their choices.

Opponents of line-item reduction authority assert that this device would severely limit legislative control of program funding, in fact granting the president the power to reduce program activities at will. Since executive agencies generally are able to "reprogram" an appropriation by shifting funds among programs, allowing the president to reduce funds would enhance executive branch control of program priorities to an unacceptable level. In a Congressional Research Service analysis of S.J.Res. 26, legislative attorney Thomas J. Ricola notes that

if the President were to propose a ten percent reduction in [a lump-sum appropriation] it is not clear how Congress would become aware how he proposes to implement such a reduction. . . . Before voting to override, they might wish to know whether he proposes to implement the reduction across the board . . . or, alternatively, completely eliminating some projects to achieve the full savings while leaving others unaffected.

In considering S.J.Res. 26, proponents may wish to focus on the precise scope of power they are granting to the President.⁷²

Proponents respond that agencies would still be responsive to the preferences of congressional committees that review their activities, since to ignore these preferences would risk retribution in the form of funding cuts or other sanctions. Opponents counter that with the loss of legislative veto power under the *Chadha* decision, reduction authority is yet another intrusion into congressional programming prerogatives.

Item Veto of Legislative Riders. Several proposals under consideration would grant the president authority to veto riders. They are H.J.Res. 10 (Bennett); H.J.Res. 357 (Kemp); and H.J.Res. 52, H.J.Res. 404, and H.R. 470 (Archer). Although both houses of Congress have a rule prohibiting legislative riders on spending bills, the practice of attaching such—often nongermane—provisions to appropriations continues. The use of the legislative rider did not come into vogue until the Civil War, and it may be assumed that this device was not discussed by the framers of the Constitution.

Proponents of proposals to allow the federal executive to item-veto riders assert that the lack of this power restricts executive authority:

The device of the rider, if deemed not subject to separate veto, is thus an impairment of the independence of the Executive in the performance of its duties as laid down in the Constitution—an independence preserved at great cost in the past. One need not take sides in the debate whether either presidential or congressional power is too weak, vis-à-vis that of the other, in order to view with concern the impact of riders on the veto power provided in the Constitution.⁷³

Adding nongermane riders to vital legislation circumvents the executive veto and can subordinate the national interest to political considerations. Thus, for example, legislative riders on appropriations bills have been used to restrict the expenditure of funds for politically controversial activities. In 1973, President

Nixon vetoed a supplemental appropriations bill containing a provision barring the use of funds in the bill for bombing Cambodia. In 1974, President Ford vetoed two appropriations bills with riders that would have restricted U.S. military assistance to Turkey. In both instances the Congress sought to impose its foreign policy priorities through the "backdoor" device of a legislative rider. Proponents of the item veto of legislative riders assert that such riders infringe on executive policy making and undermine the president's authority in the international arena.

Opponents respond that the rider is a legitimate legislative device and one necessary to maintaining a balance of power between the legislative and executive branches:

A piece of legislation is a product of a complex interaction between individual legislators, interest groups, the public, and the President himself. The individual sections of any bill, including the riders, are reflective of the inevitable compromise that occurs within Congress on any important matter. Some provisions are, in effect, passed by Congress only on the condition that other provisions, sometimes in the form of riders, are included in the bill. To allow the President then to veto the rider separately would be to confer a new and different type of power on the executive. A majority of Congress may very well oppose a bill in the form in which it is finally approved if the President exercised such a power. Thus the will of one man could conceivably cause the enactment of legislation opposed by a majority of Congress.⁷⁴

The power of the presidency, say these observers, has increased significantly during the twentieth century. If the balance between the aggregate powers of the three branches of government is to be maintained, "it is clear that the branch which least needs fortification through the grant of additional power is the executive."⁷⁵

Supporters of an item veto of legislative riders also point out that riders—since they are added to a bill after it has emerged from committee—often evade the authority of congressional committees. Rep. Charles E. Bennett spoke to this issue during hearings on the item veto held in 1957:

The practice of legislative riders is undesirable not only because it gives undue protection to the bad rider; but it is also undesirable because it forestalls consideration by a legislative committee. . . . It seems to me that this blow at legislative riders, although incidental to the objective of allowing item vetoes, is actually extremely important and a great improvement over the present situation.⁷⁶

Opponents respond that riders are necessary to express concerns supported by a majority of the Congress that would not otherwise survive committee consideration.

Alternatives to the Line-Item Veto. In the face of rising deficits, some opponents of the line-item veto support other means of controlling federal spending. Alterna-

tives include strengthened impoundment authority for the president, a strong executive budget system, and a balanced budget amendment to the Constitution.

Presidential impoundment authority. Senate Majority Leader Howard Baker, Jr., suggested that "Congress might 'do more good' by passing legislation to expand the president's power to rescind appropriations."⁷⁷ Congress restricted presidential impoundment authority in 1974 in response to President Nixon's use of these powers to impound funds on policy grounds. Proponents of rescission note that it could be enacted relatively quickly and that the precedent of earlier impoundment authority ensures that there would be no question of its constitutionality.⁷⁸ Amending the Constitution to authorize a line-item veto, they claim, "would probably not provide any authority for dealing with near-term government spending."⁷⁹ Opponents of expanding rescission authority claim that statutory enactment of this authority, unlike constitutional authorization of a line-item veto, would be subject to congressional amendment or repeal. The president's power to shape the budget could be—and has been—withdrawn if the Congress decided to exert its will in the budget process.

Critics of rescission also note that savings achieved under this authority have been minor.⁸⁰ Although President Ford, for example, requested rescissions totaling \$7.4 billion, Congress approved only \$1.2 billion. President Carter's rescission requests during his four years in office amounted to slightly over \$6.7 billion, of which Congress approved only \$2.6 billion. In both cases the rescissions approved were well under 1 percent of budget authority. Sen. William Proxmire (D-Wis.) rejects the idea that rescissions are an important budget-cutting tool: "So the argument is that we can go ahead and solve this problem with rescissions and deferrals as we have them on the books. It seems to me, on the basis of experience, we just cannot achieve the kind of savings that we can with the veto proposal."⁸¹ Proponents of rescission respond that a president willing to exercise his power to defer or rescind spending can achieve savings equal to what could be saved with a line-item veto.

A House Budget Committee report found that in his first two years in office, "President Reagan used his rescission authority extensively during which time the Congress allowed more than three-quarters of his rescission requests, resulting in more than \$20 billion lower spending."⁸² In the past two years, however, President Reagan has not used this device as vigorously, proposing rescissions totaling only \$1.5 billion in FY 1983 and \$388 million in his latest budget submission. The report concludes that the president "already has powers sufficient to achieve that which he seeks through the line-item veto" if he is willing to exercise this authority.⁸³

Sen. William L. Armstrong (R-Colo.) supports changes in current rescission procedures that would enhance presidential power to cut spending. Under the Armstrong proposal, rescissions would become effective unless disapproved by the House and the Senate within forty-five days. This procedure would "require Congress to act on rescissions to defeat them, rather than let inaction defeat them, as is now the case."⁸⁴

Strong executive budget system. In an analysis of the item veto for the Congressional Research Service, Ronald C. Moe, an analyst in American national government, summarizes features of a strong executive budget system:

Included in such a system might be features like requiring a special majority vote in the legislative body to introduce items not recommended or to vote sums for particular purposes larger than those recommended in the executive's budget plan; greater use of lump sum appropriations; increase the ability of the executive to hold spending of funds not needed; and strict use by legislatures of the rule against attaching nongermane legislative riders to appropriation bills.⁸⁵

Asserting the role of the executive in the budget process has been a dominant feature of state budgeting over the past half-century, says Robert P. Kerker, chief of administrative management of the New York State Division of the Budget. Kerker asserts that "the essential goals of the reformers who plumped for the adoption of the executive budget—coherence, responsibility, accountability—will remain intact as the bedrock of budgetary systems."⁸⁶ Frank W. Prescott of the University of Chattanooga agrees that the rise of the executive budget movement has been an important vehicle for overall control of the state budget process, relegating the item veto to the status of a "somewhat rusty 'gun behind the door,' to be aimed at an occasional predatory prowler."⁸⁷ Those who are less sanguine about the benefits of a comprehensive overhaul of the budget system to strengthen the power of the executive note that the Congress traditionally has been reluctant to cede more budget-making authority to the president and that passage of legislation to increase presidential prerogatives is unlikely. They also note that the Constitution grants the power to make decisions on expenditures to Congress.

In the states, critics claim, legislatures are in session for only a few weeks of the year. In this situation it is only natural that the governor has more control over the budget process. The state example of executive budget making is not applicable to the federal system, where Congress is intimately involved in spending policy on a year-round basis. Critics also note that in some cases the state legislatures have become powerless in the face of a strong executive budget process. Senator Johnston asserts that "the Governor of Louisiana is both the legislature and the executive. He wields the power completely." Senator Johnston objects to giving the president of the United States the same degree of power over the national budget that the state governors have over their state budgets because (1) no one person has the comprehensive knowledge that would justify such authority, (2) power would in effect be delegated to bureaucrats, and (3) power would reside in those unaccountable either to the people or to the Congress.⁸⁸

Balanced budget amendment. In 1982 the Senate passed a balanced budget amendment that would have required Congress to pass a balanced budget and keep outlays within that budget. The proposal would have required a three-fifths majority to run a deficit. Although the 1982 legislation failed to pass in the House, bills to amend the Constitution to require a balanced federal budget are a regular

feature of the debate on the budget process. Bills to require a balanced budget have been introduced in every Congress since the Eighty-ninth.⁸⁹

Proponents of a balanced budget amendment contend it would be a more effective weapon against runaway federal spending than the line-item veto. Vast government spending has necessitated increases in the money supply, which in turn fuel the fires of inflation. Beneficiaries of government spending have a strong incentive to see that these programs are continued. Arthur Burns, the former head of the Federal Reserve System, stated:

We may, in fact, be entering an era in which governmental processes are overwhelmed by the naked demands of increasingly well-organized and effective interest groups. It is this concern that has led me to look with favor on even peremptory devices for offsetting the existing bias toward larger Federal spending and borrowing. . . . A constitutional requirement of a balanced budget would indeed be drastic therapy; but this or some other decisive measure may well be needed to assure the American people that our governmental bias toward spending and borrowing is being effectively offset and that they therefore can look forward once again to a dollar of stable purchasing power.⁹⁰

Opponents contend that a balanced budget requirement would not constrain government spending, since Congress could balance the budget by raising taxes. They also argue that unavoidable economic fluctuations might cause a budget deficit despite the best efforts of Congress or government fiscal planners. Opponents note that the mandate for a balanced budget could be undermined by increasing expenditures for off-budget entities or shifting expenditures to the private sector under programs such as a national health plan.

Advocates respond that Congress would be more reluctant to raise taxes than it is to use deficit financing. Interest groups would resist a wholesale shift to the private sector of the costs of programs now under federal purview.

Some critics contend that the balanced budget amendment is too inflexible to permit proper management of the economy. The federal government would be unable to respond to economic recession with appropriate countercyclical programs. Proponents argue that a balanced budget need not be insensitive to changing economic conditions and that devices can be incorporated into an amendment to respond to fiscal crises.

Those who oppose a balanced budget amendment are concerned about the effect of such an amendment on spending priorities. Shrinking federal resources would pose a real dilemma as to where spending can be cut, and many costs would have to be shifted to state and local governments. Advocates contend that costs of government should be shifted to governments close to the people and that the federal government must make difficult choices in its efforts to control spending.

NOTES TO TEXT

1. *The Federalist Papers*, no. 73 (New York: New American Library of World Literature, 1961), p. 443.
2. Charles L. Black, Jr., "Some Thoughts on the Veto," *Law and Contemporary Problems*, vol. 6, no. 2 (Spring 1976), p. 90.
3. William J. Keefe and Morris S. Ogul, *The American Legislative Process: Congress and the States* (Englewood Cliffs, N.J.: Prentice-Hall, 1981), p. 384.
4. For a summary of the use of the gubernatorial veto for selected years 1937-1947, see Frank W. Prescott, "The Executive Veto in American States," *Western Political Quarterly* (March 1950), pp. 98-112.
5. *Ibid.*, p. 103. Prescott cites a range for the year 1947 of zero to 26.4 percent, with an average of 5.0 percent for all states and territories.
6. Council of State Governments, *The Book of the States 1982-1983* (Lexington, Kentucky: Council of State Governments, 1982), table 16, pp. 212-13.
7. Keefe and Ogul, *The American Legislative Process*, table 11.3, p. 403.
8. Vernon L. Wilkinson, "Observations on the Item Veto," August 13, 1936, Mimeographed, p. 4.
9. States allowing the governor to reduce appropriation items are Alaska, California, Illinois, Hawaii, Massachusetts, Missouri, New Jersey, North Dakota, Pennsylvania, Tennessee, and West Virginia.
10. Ronald C. Moe, "The Item Veto" (Washington, D.C.: Congressional Research Service, December 13, 1973, Mimeographed), p. 3.
11. Council of State Governments, *Book of the States*, table 16, pp. 212-13.
12. State information in this paragraph is taken from *ibid.*, p. 277.
13. *Congressional Record*, vol. 129 (February 1, 1983), p. S837.
14. U.S. Congress, Senate, Committee on the Judiciary, *Item Veto*, 83d Congress, 2d session, May 13, 1954, p. 3 (hereafter *1954 Hearings*).
15. Russell M. Ross and Fred Schwengel, "An Item Veto for the President?" *Presidential Studies Quarterly*, vol. 12 (Winter 1982), p. 66.
16. Lower estimates assume that no legislative changes will be made in eligibility criteria or benefit levels in programs where payments are "automatic." Higher estimates assume some legislative changes.
17. See Norman Ornstein, "The Breakdown of the Budget Process," *Wall Street Journal*, November 24, 1981.
18. The ruling in the *Chadha* case (*Immigration and Naturalization Service v. Jagdish Rai Chadha*, 454 U.S. 812, 70 L ed 2d 80, 102 SCt 87) that the legislative veto is unconstitutional leaves the disapproval by the legislature of an executive decision to defer expenditure of funds in doubt.

19. Henry Hazlitt, "Line-Item Leash on Runaway Spending," September 9, 1983.
20. Ross and Schwengel, "An Item Veto for the President?" p. 77.
21. Ibid.
22. *Congressional Record*, vol. 129 (October 29, 1983), p. S14942.
23. Ibid., p. S14945.
24. Mickey Edwards, "A Conservative's Case against the Line Item Veto," *Washington Post*, February 8, 1984.
25. Ibid.
26. Quoted in *1954 Hearings*, p. 6.
27. *Congressional Record*, vol. 129 (October 29, 1983), p. S14948.
28. Ibid.
29. Ibid., p. S14941.
30. Ibid., p. S14940.
31. Ibid., p. S14936.
32. Keefe and Ogul, *The American Legislative Process*, pp. 384-85.
33. Prescott, "The Executive Veto in American States," p. 108.
34. Ross and Schwengel, "An Item Veto for the President?" note 39, p. 79.
35. Black, "Some Thoughts on the Veto," p. 92. Black omits from his compilation President Andrew Johnson's extensive veto confrontation with the Congress.
36. U.S. Congress, House, Committee on the Budget, *The Line-Item Veto: An Appraisal*, January 1984, p. 4.
37. Wilkinson, "Observations on the Item Veto," p. 30. See also the discussion in the Senate, *Congressional Record*, vol. 129 (October 29, 1983), pp. S14941-48.
38. House, Committee on the Budget, *The Line-Item Veto*, p. 3.
39. Ibid.
40. *Congressional Record*, vol. 129 (October 29, 1983), p. S14941.
41. David Hoffman, "Reagan Says He Will Ask Congress for 'Line-Item' Veto Power," *Washington Post*, January 14, 1984.
42. Ibid.
43. Edwards, "A Conservative's Case against the Line Item Veto."
44. Dale Tate, "Reagan's Deficit-Cutting Bid May Spotlight Line-Item Veto," *Congressional Quarterly*, vol. 130 (January 21, 1984), p. 114.
45. *Congressional Record*, vol. 129 (October 29, 1983), p. S14939.
46. Dale Russakoff, "Grace Panel Finds Pork Barrel Overflowing," *Washington Post*, January 10, 1984.
47. Kenneth A. Hammond, "The Item Veto in the State of Washington" (Washington State Legislative Council, Subcommittee on the Judiciary, August 1962, Mimeographed), p. 8.

48. 1954 Hearings, statement of Bennett, p. 5.
49. Illinois Bureau of the Budget.
50. California Department of Finance.
51. Pennsylvania Office of Budget.
52. Frank W. Prescott, "The Executive Veto in Southern States," *Journal of Politics* (November 1948), p. 673.
53. Ibid.
54. "Dixon Pushes His Line-Item Veto Proposal," *Washington Times*, February 9, 1984.
55. President's Private Sector Survey on Cost Control, *Management Office Selected Issues: The Cost of Congressional Encroachment* (Washington, D.C., 1983), p. 109.
56. *Congressional Record*, vol. 129 (October 5, 1983), p. S13591.
57. Ibid., p. S13594.
58. Ibid.
59. *Congressional Record*, vol. 129 (October 29, 1983), p. S14946.
60. Ibid., p. S14947.
61. President's Private Sector Survey on Cost Control, *The Cost of Congressional Encroachment*, p. v.
62. Jay Shampansky, "Proposals to Grant the President the Power to Item Veto Appropriation Bills" (Washington, D.C.: Congressional Research Service, 1981, Mimeographed), p. 6.
63. U.S. Congress, House, Committee on the Judiciary, *Item Veto: Hearing on Bills to Authorize the President to Disapprove Items in General Appropriation Bills*, 85th Congress, 1st session, May 27, 1957, p. 54, statement of Rep. Stewart L. Udall (D-Ariz.) (hereafter 1957 Hearings).
64. 1957 Hearings, p. 62, statement of James P. Radigan, Jr.
65. "Separation of Powers: Congressional Riders and the Veto Power," *Journal of Law Reform*, vol. 6 (Spring 1973), pp. 745-46.
66. Ibid., p. 743.
67. Council of State Governments, *Book of the States*, p. 368.
68. Ibid., p. 418.
69. George F. Will, "Bargain Government," *Washington Post*, January 27, 1984.
70. "Ronald Reagan's Veto," *Wall Street Journal*, January 31, 1984.
71. Ross and Schwengel, "An Item Veto for the President?" p. 75.
72. "Analysis of S.J.Res. 26, 98th Congress, A Constitutional Amendment to Grant the President an Item Veto of Appropriations" (Washington, D.C.: Congressional Research Service, September 7, 1983, Mimeographed), pp. 13-14.
73. Richard A. Givens, "The Validity of a Separate Veto of Nongermane Riders to Legislation," *Temple Law Quarterly*, vol. 39, no. 1 (Fall 1965), p. 61.
74. "Separation of Powers: Congressional Riders and the Veto Power," p. 756.

75. Ibid., p. 758.
76. *1957 Hearings*, p. 49.
77. Helen Dewar, "Baker Suggests Alternative to Line-Item Veto," *Washington Post*, January 31, 1984.
78. See Juan Williams, "Reagan Told of Line-Item Veto Hurdles," *Washington Post*, January 30, 1984, for a description of a White House background paper discussing the advantages of enhanced rescission powers.
79. Ibid.
80. Data taken from Richard E. Cohen, "Congress Plays Election-Year Politics with Line-Item Veto Proposal," *National Journal* (February 11, 1984), p. 276.
81. *Congressional Record*, vol. 129 (October 29, 1983), p. S14937.
82. Quoted in the *Congressional Record*, vol. 130 (February 9, 1984), p. E440.
83. Ibid.
84. Cohen, "Congress Plays Election-Year Politics with Line-Item Veto Proposal," p. 276.
85. Moe, "The Item Veto," pp. 6-7.
86. "State Budgeting," Council of State Governments, *Book of the States*, p. 274.
87. Prescott, "The Executive Veto in Southern States," p. 673.
88. *Congressional Record*, vol. 129 (October 29, 1983), p. S14947.
89. John D. Fisk, "Legislation to Limit Federal Expenditures: Past and Present" (Washington, D.C.: Congressional Research Service, January 18, 1979, Mimeographed), p. 10. Arguments in this section are summarized from *Proposals for a Constitutional Convention to Require a Balanced Federal Budget*, American Enterprise Institute Legislative Analysis, no. 3 (Washington, D.C., 1979).
90. *Proposals for a Constitutional Convention to Require a Balanced Budget*, pp. 25-26.

The American Enterprise Institute for Public Policy Research, established in 1943, is a nonpartisan research and educational organization supported by foundations, corporations, and the public at large. Its purpose is to assist policy makers, scholars, businessmen, the press, and the public by providing objective analysis of national and international issues. Views expressed in the institute's publications are those of the authors and do not necessarily reflect the views of the staff, advisory panels, officers, or trustees of AEI.

Council of Academic Advisers

Paul W. McCracken, *Chairman, Edmund Ezra Day University Professor of Business Administration, University of Michigan*

*Kenneth W. Dam, *Harold J. and Marion F. Green Professor of Law, University of Chicago*

Donald C. Hellmann, *Professor of Political Science and International Studies, University of Washington*

D. Gale Johnson, *Eliakim Hastings Moore Distinguished Service Professor of Economics and Chairman, Department of Economics, University of Chicago*

Robert A. Nisbet, *Adjunct Scholar, American Enterprise Institute*

Herbert Stein, *A. Willis Robertson Professor of Economics, University of Virginia*

James Q. Wilson, *Henry Lee Shattuck Professor of Government, Harvard University*

*On leave for government service.

Executive Committee

Richard B. Madden, *Chairman of the Board*

William J. Baroody, Jr., *President*

James G. Affleck

Willard C. Butcher

Paul F. Oreffice

Richard D. Wood

Tait Trussell,

Vice President, Administration

Joseph J. Brady,

Vice President, Development

Edward Styles, *Director of Publications*

Program Directors

Russell Chapin, *Legislative Analyses*

Denis P. Doyle, *Education Policy Studies*

Marvin Esch, *Seminars and Programs*

Thomas F. Johnson, *Economic Policy Studies*

Marvin H. Kosters, *Government Regulation Studies*

Jack A. Meyer, *Health Policy Studies*

Howard R. Penniman/Austin Ranney, *Political and Social Processes*

Robert J. Pranger, *International Programs*

Periodicals

AEI Economist, Herbert Stein, *Editor*

AEI Foreign Policy and Defense Review, Evron M. Kirkpatrick, Robert J. Pranger, and Harold H. Saunders, *Editors*

Public Opinion, Seymour Martin Lipset and Ben J. Wattenberg, *Co-Editors*; Everett Carl Ladd, *Senior Editor*; Karlyn H. Keene, *Managing Editor*

Regulation, Anne Brunsdale, *Managing Editor*

SELECTED AEI PUBLICATIONS

The Adversary System: A Description and Defense, Stephan Landsman (56 pp., \$4.95)

Uniform Rules of Criminal Procedure for All Courts, Russell Chapin with W. Graham Hueber (66 pp., \$4.95)

Equal Opportunity: On the Policy and Politics of Compensatory Minority Preferences, Allan P. Sindler (27 pp., \$2.95)

Meeting Human Needs: Toward a New Public Philosophy, Jack A. Meyer, ed. (469 pp., cloth \$34.95, paper \$13.95)

The Federal Antitrust Laws, Fourth Revised Edition, Jerrold G. Van Cise (92 pp., \$4.95)

Private Enforcement of the Antitrust Laws: An Economic Critique, Warren F. Schwartz (33 pp., \$3.25)

Regulating International Business through Codes of Conduct, Raymond J. Waldmann (139 pp., cloth \$12.25, paper \$5.25)

Significant Decisions of the Supreme Court, 1978-1979 Term, Bruce E. Fein (199 pp., \$6.25) (earlier editions are also available)

• Mail orders for publications to: AMERICAN ENTERPRISE INSTITUTE, 1150 Seventeenth Street, N.W., Washington, D.C. 20036 • For postage and handling, add 10 percent of total; minimum charge \$2, maximum \$10 • For information on orders, or to expedite service, call toll free 800-424-2873 • When ordering by International Standard Book Number, please use the AEI prefix—0-8447 • Prices subject to change without notice • Payable in U.S. currency only

AEI ASSOCIATES PROGRAM

The American Enterprise Institute invites your participation in the competition of ideas through its AEI Associates Program. This program has two objectives: (1) to extend public familiarity with contemporary issues; and (2) to increase research on these issues and disseminate the results to policy makers, the academic community, journalists, and others who help shape public attitudes. The areas studied by AEI include Economic Policy, Education Policy, Energy Policy, Fiscal Policy, Government Regulation, Health Policy, International Programs, Legal Policy, National Defense Studies, Political and Social Processes, and Religion, Philosophy, and Public Policy. For the \$49 annual fee, Associates receive

- a subscription to *Memorandum*, the newsletter on all AEI activities
- the AEI publications catalog and all supplements
- a 30 percent discount on all AEI books
- a 40 percent discount for certain seminars on key issues
- subscriptions to two of the following publications: *Public Opinion*, a bimonthly magazine exploring trends and implications of public opinion on social and public policy questions; *Regulation*, a bimonthly journal examining all aspects of government regulation of society; and *AEI Economist*, a monthly newsletter analyzing current economic issues and evaluating future trends (or for all three publications, send an additional \$12).

Call 202/862-6446 or write: AMERICAN ENTERPRISE INSTITUTE
1150 Seventeenth Street, N.W., Suite 301, Washington, D.C. 20036

OBSERVATIONS ON THE ITEM VETO

by

Vernon L. Wilkinson
August 13, 1936

Reprinted in
House Hearings
House Committee on the Judiciary
Subcommittee No. 3
85th Congress, 1st Session
May 27, 1957
Pages 63-77

OBSERVATIONS ON THE ITEM VETO

The question of conferring on the President the power to veto items in appropriation bills was nowhere raised in the Constitutional Convention of 1787.^{1/} With the then prevailing distrust for executive authority, this is not surprising. One marvels more than the Executive was allowed even a qualified general veto. Respecting the insertion of the veto provision in the federal Constitution, no less an authority than Lord Bryce once remarked: "Considering that the arbitrary use, by George III. and his colonial governors, of the power of refusing bills passed by a colonial legislature had been a chief cause of the Revolution of 1776, it is to the credit of the Americans that they inserted this apparently undemocratic provision . . . in the Constitution of 1789."^{2/} A brief exposition of the origin of the federal veto provision will add no little credence to Lord Bryce's observation.

The Veto Power in the Colonies: In each of the thirteen colonies prior to the American Revolution the governor could veto any measure of the legislature.^{3/} And in all colonies except Rhode Island and Connecticut the governor was appointed by the King. Then if perchance a law received the assent of the colonial governor contrary to the wishes of the King and the instructions of the Lords of Trade, it was still subject to the royal veto (except a measure enacted by proprietary

Maryland or by the charter colonies of Rhode Island and Connecticut). When the veto was exercised, either by the governor or the King, it was absolute.^{4/}

The Veto Power under the Articles of Confederation: The complaints of the colonists against the refusal of the governor and the King to approve colonial measures became more and more bitter. "He [George III.] has refused his Assent to Laws . . . He has forbidden his Governors to pass Laws . . ." - thus read the first two grievances set forth in the Declaration of Independence. With this resentment against the royal governor and his prerogatives, it was natural that the state governors after the outbreak of hostilities should in every instance be deprived of their veto power. In fact the office of governor was in several states replaced by innocuous executive commissions. Similarly the Articles of Confederation established a Committee of the States to execute in the recess of Congress such limited powers as Congress might deem expedient to vest them with.^{5/} The Committee, of course, had no vote.

The Veto Power in the Federal Convention: Within a few years the weakness inherent in a "headless" government became apparent, particularly to a certain coterie of leaders. Delegates were finally assembled at Philadelphia to propose "amendments" to the Articles of Confederation. The delegates proceeded to violate instructions. Behind closed doors they commenced the drafting of an entirely new constitution.

Three main plans of government were variously pressed. The "Jersey Plan", for example, recognised the prevailing fear of executive power which had not yet been dispelled. It would continue the Confederation without an executive. Roger Sherman, for instance, thought that the Executive should be the mere agent of the Legislature to carry out its will. Randolph of Virginia believed that the Executive should not only be thus controlled, but in order to protect against a possible abuse of power, such functions should be vested in a number of persons

There would be no veto. The "Virginia Plan" and the Pinckney Plan" on the other hand contained veto clauses. Hamilton and even Madison advocated the restoration of many of the royal prerogatives - under less odious nomenclature.

The delegates, for the most part, reluctantly recognized the necessity of providing for a chief executive and of conferring upon him a limited veto power. But the veto was not to be absolute.^{6/} Such power might again prove tyrannical. At most the President was to have a "qualified negative."^{7/} The debate turned chiefly on the form this veto power should take. Should it be exercised by the Executive alone or should it be entrusted jointly to the Executive and the Judiciary (as in New York)?^{8/} Should the veto be overridden by a majority, by two-thirds, or by three-fourths of Congress? Article I, Sec. 7, paragraphs 2 and 3, modelled closely after the veto provision in the Massachusetts Constitution,^{9/} were finally adopted, vesting the veto power exclusively¹⁰ in the President; two-thirds of each house of Congress could override the veto.

The Item Veto in the States: Following the lead of Massachusetts and the Federal Government, the States, as they revised their constitutions in the next several decades, generally restored to their governors the veto power.^{11/} But it was not until the time of the Civil War that the principle of item veto found expression in an American Constitution. The provisional Constitution of the Confederate States, adopted on the 8th of February 1861, permitted the President to "veto any appropriation or appropriations, and approve any other appropriation or appropriations, in the same bill."^{12/} This same provision in slightly altered form was adopted in the permanent constitution of March 11, 1861.^{13/} "Georgia and Texas in 1865 and 1866 respectively, included this power in their proposed constitutions under the presidential plan of reconstruction. These same two states again included it in their constitutions of 1868, adopted under the congressional plan of reconstruction."^{14/} Since the Civil War, with a single exception, every new state admitted to the

Union and many of the older states have granted their governors this power. In fact the governors of 39 states may now disapprove items in appropriation bills.^{15/}

Furthermore, the Constitutions of the States of South Carolina and Washington authorize the governors to veto sections of any bill, whether it be an appropriation measure or not. Similarly the governors of Alabama and of Virginia may return any bill to the legislature suggesting amendments thereto; the bill must again be returned to the governor for approval or disapproval regardless of the action of the legislature on the suggested amendments. The governors of Massachusetts and California, among others, may not only disapprove but may also reduce items in appropriation bills.

Agitation for the Item Veto in the Federal Constitution: With the adoption of the item veto by the States, agitation for a similar provision in the federal Constitution soon developed.^{16/} The practice of attaching "riders" to appropriation bills, a practice which became common during the Sixties, caused President Grant in his message to Congress in 1873 to recommend an amendment "to authorize the Executive to approve of so much of any measure passing the two Houses of Congress as his judgment may dictate, without approving the whole, the disapproval or portions to be subject to the same rules as now."^{17/} This recommendation, limited to appropriation measures, was renewed by Presidents Hayes and Arthur in 1879 and 1882.^{18/}

Mr. Faulkner of West Virginia introduced on January 18, 1876 the first amendment proposing to confer upon the President the right to veto items in appropriation bills.^{19/} In nearly every succeeding Congress the proposal has been reintroduced in varying forms. At least 80 such amendments have been introduced between 1876 and 1936 (44th to 74th Congresses).^{20/} These proposals have differed in scope and in detail. Some have applied to all appropriation bills, others to "general" appropriation bills. Some were confined to rivers and harbors bills. Several would have allowed the President to reduce as well as veto items

in appropriation measures. Some would permit the vetoed items to be restored by a majority vote of both houses, others would have retained the two-thirds requirement for item as well as general vetoes.

These proposed amendments have for the most part been buried in the judiciary committees. A few have been reported, generally adversely. For example, the Senate Judiciary Committee on February 9, 1880 adversely reported S. Res. 4 and S. Res. 21;^{21/} the bills were thereupon indefinitely postponed.^{22/} Similarly H. Res. 17, 49, 56, 66, and 77 of the 49th Congress were adversely reported^{23/} on April 22, 1886 and laid on the table.^{24/} In 1883 on a motion^{25/} to suspend the rules so that the House Judiciary Committee might be discharged and H. Res. 267 passed, the motion was defeated; ayes 101, noes 58 (the motion requiring a two-thirds majority).^{26/} This has been the only occasion in which the item veto principle has been subjected to a vote in either house.

On April 21, 1884, for the first and (to date) the only time, the Senate Judiciary Committee favorably reported a resolution (S. Res. 18 by Mr. Lapham of New York) proposing to amend the Constitution so as to confer on the President the power to veto items in appropriation bills.^{27/} By unanimous consent on December 9, 1884, S. J. Res. 18 was made special order of business for December 17.^{28/} But on that date and again on February 10 and February 19, 1885 the Resolution was passed over in the Senate.^{29/} (S. Res. 8 and S. Res. 22 by Senator George of Mississippi and Senator Morgan of Alabama had been indefinitely postponed in view of S. Res. 18).^{30/} In 1913 hearings were held on H. J. Res. 15, but the bill was not reported.^{31/}

Among the arguments advanced in favor of a constitutional amendment permitting the President to veto separate items or provisions of appropriation bills are the following:^{32/}

1. It would reduce extravagance in public expenditures. Such an amendment, according to President Grant, "would protect the public against the many abuses and waste of public moneys which creep into appropriation bills and other important measures . . ."³³ . . . it . . .

would check extravagant legislation".^{34/} "A president would have every incentive to use the new power. Even if he cared not to check extravagance as a matter of principle, he very often would be called upon to do it as a matter of party policy, and the exercise of the power from whatever motive would be of advantage to the country. The very least that could be said is that the change would not increase the expenditure of the government, and in all probability it would diminish it."^{35/} "Especially true is it, that public expenditures of a sensible and frugal character never can be so well assured if there is lacking this power to excise items of appropriations. . . . the taxpayer's interest needs to be as carefully guarded in the spending as in the gathering. And it becomes the State first to provide a means to such an end. The simplest and plainest and surest one is a veto of appropriation items. For by it public income and outgo can be rationally balanced and easily so maintained. Present economics can be more scrupulously enforced, legitimate demands more easily met. A complete policy of retrenchment can be announced confidently and adhered to faithfully".^{36/}

Lord Bryce in his penetrating analysis of American government observed: "Such an amendment is desired by enlightened men. . . . Small as the change seems, its adoption would cure one of the defects due to the absence of ministers from Congress, and save the nation millions of dollars a year, by diminishing wasteful expenditure on local purposes."^{37/} "It would undoubtedly lead to the trimming of some rivers and harbors bills, public buildings bills, and general appropriation bills . . ."^{38/} Such has been its effect in the States. For example, Hiram Johnson in 1913 as Governor of California "segregated and vetoed over \$3,000,000 of appropriations [out of a total of \$20,000,000]."^{39/} Not a single item was repassed over his veto. The governors of Illinois between 1899 and 1915 similarly pared more than \$4,730,000 from the biennial appropriations (totalling more than \$211,000,000) by their use of the item veto.^{40/} Since these items were not restored, one can assume that they were at least not indispensable.

2. It would discourage "pork-barrel" appropriations. President Arthur, in vetoing the rivers and harbors appropriation bill of 1882, called attention to the danger which arises from multifarious appropriations for local projects. He said: "As the citizens of one State find that money, to raise which they in common with the whole country are taxed, is to be expended for local improvements in another State, they demand similar benefits for themselves, and it is not unnatural that they should seek to indemnify themselves for such use of public funds by securing appropriations for similar improvements in their own neighborhood. Thus as the bill becomes more objectionable it secures more support."^{41/} A few months later in his second annual message to Congress, after his veto of the rivers and harbors bill had been overridden, he restated his objection to "pork-barrel" legislation in this language: ". . . the practice of grouping in such a bill appropriations for a great diversity of objects, widely separated either in their nature or in the locality with which they are concerned, or in both, is one which is much to be deprecated unless it is irremediable. It inevitably tends to secure the success of the bill as a whole, though many of the items, if separately considered, could scarcely fail of rejection. . . . I commend to your careful consideration the question whether an amendment of the Federal Constitution [to allow the Executive to veto items in appropriation bills] . . . would not afford the best remedy for what is often a grave embarrassment both to members of Congress and to the Executive, and is sometimes a serious public mischief."^{42/}

George Harvey in the North American Review echoed these views in 1916 when he wrote: "Paradoxically speaking, the good parts of [bills providing for public works] . . . are their worst parts. That is to say, there are items for buildings or improvements which are not only desirable but actually indispensable and imperative. These are conjoined with the most unblushing 'steals', for the cunning reason that all must stand or fall together, and nobody will incur the odium

of voting against these good proposals and therefore they will have to vote for the bad ones, too; and the President will not veto appropriations which he knows to be absolutely necessary, and therefore he will have to approve the graft as well. Sometimes, indeed, the advocates of good causes actively support bad ones, because they need the support of the grafters . . . The whole thing is a mixture of 'log-rolling' and blackmail."^{43/} President Cleveland recognized the danger which results from collusive appropriations for local projects when he said: "Appropriation bills for the support of the Government are defaced by items and provisions to meet private ends, and it is freely asserted by responsible and experienced parties that a bill appropriating money for public internal improvement would fail to meet with favor unless it contained items more for local and private advantage than for public benefit."^{44/} "The so-called 'pork-barrel', so often the discredit if not the scandal of congressional appropriations, would part with most of its lure, because it would be very diminutive in size and very uncertain as to contents, were our presidents given this most sensible power [to veto items in appropriation bills]"^{45/}

3. It would curb "log-rolling". At present a Congressman's chances for reelection depend largely on the amount of public money which he has obtained for his district and his constituents. It therefore behoves Congressman Tubbs to say to Congressman Nubbs, "You vote for my appropriation and I'll vote for yours."

"If you don't vote for digging out Catfish Creek and pumping water into it so as to make it navigable," says Tubbs to Nubbs, "I'll oppose your item for making East River deep enough for warships to get to and from the Navy Yard".

"So the bill goes through with all its contained 'pork', and is laid before the President. He must either sign it as a whole or veto it as a whole. He knows that the Navy Yard channel urgently needs deepening. . . . But to secure those appropriations he must

also approve the Catfish Creek and Wayback postoffice graft. What is he to do? Defeat measures which are necessary for the public good? Or permit unblushing thefts of public funds? . . .

"This grave embarrassment . . . could easily be averted. That could be done by the simple and reasonable expedient of investing the President of the United States with the same power and discretion which Governors of most of the States have long enjoyed, to-wit, the authority to exercise discrimination in dealing with appropriation bills, so as to approve some items while disapproving others. . . .

"Such a provision does not always prevent 'grabs' and 'pork'. It does prevent 'log-rolling' through the mixture of good and bad items in a single bill. It compels every proposed appropriation to stand or fall according to its own merits."^{46/}

"Innumerable items which, if embodied in separate bills, would have no chance of passage are included in the general appropriation bills as the result of the 'log-rolling' process, whereby the members of Congress extend friendly consideration to each other's wasteful or extravagant measures, whose passage is sought not on public grounds, but solely to promote the interests of individual Congressmen with their constituents. Every large general appropriation bill is loaded up with items of this class as a result of the system. The appropriation bills for rivers and harbors, for public buildings, and other similar purposes are swelled enormously and for unjustifiable purposes."^{47/}

The President, by his exercise of the item veto, can eliminate these local "pork-barrel" appropriations which have passed Congress as a result of "log-rolling" tactics. While the President does not lose his human nature and while he is not more honest than members of Congress, nevertheless he does not have to go back to a single district or State for reelection.^{48/} "Somebody else has to take the broad view, to look after the nation or the State, while they [the legislators] are absorbed with Buncombe County or Podunk.

And this somebody is getting to be more and more the directly elect of all the people".^{49/} Such an amendment will, therefore, "give the President an opportunity to keep faith with the people by vetoing extravagant and unnecessary appropriations".^{50/}

4. It would restore to the President his veto power. The practice of conjoining numerous items in appropriation bills, rivers and harbors bills, and public works bills has practically nullified the power of veto directly granted to the Executive by the Constitution. "It is prima facie the intent of the Constitution that the President shall have power to prevent the enactment of legislation to which he objects unless upon a reconsideration two-thirds of the members of each house of Congress re-approve the bill disapproved by the President.

"This implies that the President shall be free to give effect to his independent judgment upon the merits of bills which come before him for approval or disapproval.

"Such independent judgement cannot now in all cases be exercised by the President. Bills presented for his action sometimes comprise two or more unrelated subjects. One of these may commend itself to him; as to the other, his judgment may be adverse, but he cannot deal with the two subjects separately upon their merits. Whatever his action, it applies to and affects both subjects alike. The enactment of the provisions relating to one of the subjects may be highly desirable for the public welfare; those relating to the other may be equally undesirable. If the provisions were presented separately, the President would approve one and veto the other. Being presented conjointly, the President is compelled either to approve both or to veto both. In the former case, the undesirable and possibly harmful measure becomes law; in the latter, the desirable or even pressingly necessary measure fails to become law.

"Thus, by conjoining in a single bill diverse subjects of varying degrees of merit and requiring action by the President upon

the bill as a whole, he is deprived of the power of independent judgment, and coerced either into accepting that of which his judgment disapproves or defeating that which he believes wise and necessary . . .

"Two grave accompanying evils have resulted:

One. The practical powerlessness of the President to exert any effective restraining influence upon general appropriation bills, and the resulting outlays;

Two. The frequent enactment of undesirable measures opposed by the President by attaching them as 'riders' to general appropriation bills whose passage is usually indispensable to the operation of government, and whose acceptance by the President is therefore practically compulsory . . .

"General appropriation bills are commonly delayed until near the closing hours of Congress, and effective scrutiny and revision of them by either House is extremely difficult and practically impossible. They are the channels through which all sorts of 'jobs' and questionable appropriations find their easy course . . .

"The President is practically powerless to prevent these abuses, which lie at the root of the governmental extravagance of the United States, by reason of the fact that he has no discretion as to individual items, but must accept measures as a whole or reject them as a whole.

"The injection into general appropriation bills of unrelated substantive measures in the form of 'riders' is a cognate abuse.

"Many objectionable measures which, standing by themselves, would unquestionably be vetoed by the President are forced upon his acceptance by presenting them to him as part of an appropriation bill which the public interest will not permit him to veto."⁵¹/

President Buchanan in his first annual message to Congress remonstrated against the coercion thus imposed upon the Executive.

He said: ". . . a practice has grown up of late years to legislate in appropriation bills at the last hours of the session on new and important subjects. This practice constrains the President either to suffer measures to become laws, which he does not approve, or to incur the risk of stopping the wheels of Government by vetoing an appropriation bill."^{52/}

In 1892 President Harrison indicated that he had signed the Indian Appropriation Bill of 1891, carrying an objectionable item for \$3,000,000, under duress. His comment was: "If this section had been submitted to me as a separate measure, especially during the closing hours of the session, I should have disapproved it; but as the Congress was then in its last hours, and disapproval of the general Indian appropriation bill, of which it was a part, would have resulted in consequences so far-reaching and disastrous that I felt it my duty to approve the bill."^{53/}

In June 1912 President Taft, when he vetoed the Army Appropriation Bill, summed up the manner in which Congress has coerced the Executive and weakened his veto power in these words: "The dangers inherent in the practice of attaching substantive legislation to appropriation bills have been frequently pointed out by my predecessors. . . . Taken as a whole, it would be hard to conceive of a clearer instance of an attempt to force upon the Executive legislation well known to be disapproved by him, and, by attaching such legislation to one of the great supply bills of the Government, to deprive the President of his constitutional power as to legislation. There can be no constitutional defense to such a practice."^{54/} For Congress to insist upon the approval of a bill with all its numerous items and provisions "under the penalty of stopping all of the operations of the Government for want of the necessary supplies is to . . . [strike] from the Constitution the

qualified negative of the President."^{55/} In other words, to confer on the President the power to veto items or provisions in appropriation bills would merely restore to the President his veto power. It would not upset the constitutional balance between the legislature and the executive branches of the Government. Such an amendment would not give the President additional power; he is authorized by the Constitution to veto the entire bill at present. The new proposal would permit him to veto undesirable items without endangering the passage of the needed appropriations.^{56/}

5. It would expedite completion of the legislative program.

Representative Hayes of California pointed out that such an amendment "would not only save the expense to the people of the United States by the President vetoing various items that should not be in the appropriation bills, but it will save a lot of work to the Members of Congress. In the last Congress President Taft vetoed the sundry civil appropriation bill on account of one item in it. The result was that Congress had to take up that matter and go through the labor of preparing a new sundry civil bill that had to pass through the House and Senate and go into conference; go the whole course again. . . . the President could not single out that item and veto it; he must veto the whole bill, and then we must take the whole matter up again . . ."^{57/} The veto, therefore, of important appropriation measures toward the close of the session may necessitate the undesirable prolongation of the session or the calling of a special session. Rather than incur such alternatives, Presidents have under duress approved supply bills with objectionable features.^{58/}

6. The item veto has worked successfully in the States.

The forty-eight states have proved to be laboratories for experiments in the science of government. In thirty-nine states the item veto has now been tested - in some cases for upwards of half a century. In no state where the item veto has once been conferred upon the governor has it been subsequently withdrawn. Almost without excep-

tion the comments on its exercise in the various States have been favorable. In Arizona, for example, the power to veto items in appropriation bills "has tended toward the keeping down of expenditures by the State legislature."^{59/} In Colorado this same power "has proved very efficacious in holding down of State expenditures, as the governor has often exercised his right to cut various items from appropriation bills."^{60/} The Governor of Illinois, Mr. Frank O. Lowden made this comment: ". . . it has been very helpful in keeping down expenditures."^{61/} The executive clerk of the State of Kansas, Mr. C. W. Smith, stated: "This provision of the [Kansas] constitution has been found to be effective in preventing 'pork-barrel' appropriations. It also enables legislation to get through without being defeated by vicious riders."^{62/} Governor J. A. A. Burnquist of Minnesota believed that the item veto was "a very wise provision."^{63/} Philip F. Bross, Secretary of Finance for the State of Nebraska, made this comment: "I think the executive has only availed himself of this right [to veto items] one or two times within the last 8 or 10 years, but having a constitutional provision giving the executive this power is without doubt a check upon the legislature in placing items of expense in appropriation bills unless they are quite sure that they meet the approval of the chief executive."^{64/} Governor (now Senator) Robert D. Carey of Wyoming believed that by his exercise of the item veto that he had saved "unnecessary expenditures."^{65/}

Comments from governmental officials in States whose governors lacked the power to veto items have generally been in favor of an amendment of this nature. Governor M. H. Holcomb of Connecticut, a State which had no provision for item veto in 1919, said he was fully satisfied that the Governor "should have the power to express his disapproval of any particular item."^{66/} Governor W. L. Harding of Iowa expressed a similar belief: "I regret that we do not have in our State constitution such a provision . . . I wish that we did, as it would be most helpful in keeping down expenditures."^{67/}

Governor J. P. Goodrich of Indiana, another State with no item veto provision, wrote: "We have no such provision in our constitution, but upon my recommendation a proposed amendment almost identical with the one you propose [H. J. Res. 238, 66th Cong., 2d Sess.] passed our general assembly and will be submitted to the people for ratification."^{68/}

Carl E. Milliken, the Governor of Maine, believed that "such a proposition is very essential."^{69/} The Governor of Nevada, Emmet D. Boyle, wrote: "Unfortunately we have no such provision in our own constitution.

The general appropriation bills passed in the State Legislatures and in Congress are no doubt the most widely used vehicles employed in carting off public funds. I can see everything in favor of the amendment [to confer on the President the power to veto items in appropriation bills]."^{70/} The comments of Governor T. W. Bickett of North Carolina, the only State which denies to its Governor the veto power in any form, are worthy of quotation in extenso: ". . . the governor of North Carolina has no veto power of any kind. You will, of course, remember that North Carolina was the first colony to kick up the devil and declare its independence of Great Britain. The people looked upon the governor as the successor to the King, and they were dead against him. They took pains in their constitution to tie him hand and foot. The only power that he has is that of moral suasion. I heartily approve the law that you quote [provision for the item veto], and think that such a law certainly ought to be enacted by Congress and by every legislature."^{71/}

Among the arguments advanced against the advisability of conferring on the President by constitutional amendment the power to veto items or sections of appropriation bills are the following:^{72/}

1. It would lessen the responsibility of Congress. "Representative government requires that for enduring success responsibility should be fixed. The proposal would lessen the responsibility that now rests upon Congress for the appropriations. For the purpose of

enforcing this responsibility the whole membership of the House of Representatives has to stand for reelection every two years. If the President had power to veto items in appropriation bills Congress would shift much of its responsibility to the President.

"Such a shifting of responsibility may appear in some of the States where the governor can veto items. For example, in New York and in Pennsylvania each session of the legislature tends to appropriate money beyond the revenues of the State and upon adjourning leaves to the governor the task of deciding what items are to be discarded. When the last session of the Pennsylvania legislature adjourned, in May, 1915, it had passed bills appropriating for the next two years an aggregate of \$72,494,000 or \$10,500,000 in excess of the estimated revenues. A month later the governor announced that he had vetoed items totalling \$6,729,000, incidentally cutting in half the amount planned for improving the port of Philadelphia and 'paring down' the funds for education. He had vetoed only seven items that were complete in themselves; they aggregated \$1,381,000; the balance of the amount vetoed the governor made up by 'scaling down' items. Two years before the governor of Pennsylvania had faced appropriations of \$89,000,000 and had decreased them by \$22,800,000.

"After the last session of the New York legislature adjourned, in April, 1916, the governor announced his approval of items that made \$59,100,000 and his disapproval of \$1,900,000.

"While considering appropriation bills the governor in States where he may veto items receives requests of all kinds and in all ways, either to approve or to disapprove. He may hold public or private hearings. In 1916, the Governor of New York [Charles S. Whitman] refused petitions from the mayor of the City of New York and associations that he disapprove items which amounted to \$6,000,000.

"Illustrations such as these go to show that both the feeling of responsibility and the responsibility actually assumed in the legislature diminish."^{73/}

The prevailing practice of one branch of the legislature to "pass the buck" to the other has become so notorious that the bicameral principle has been discarded in the State of Nebraska, in nearly every American city, and in some foreign countries. On controversial subjects like suffrage, prohibition and the bonus, Members of the House have not infrequently supported such measures, lest they incur the loss of votes in their individual districts, yet secretly hoping that the measure would be defeated in the Senate. By conferring on the President the power to delete "pork-barrel" items from appropriation bills, both the Senators and the Representatives could shift much of their responsibility to the President. Tubbs could say to Chairman Nubbs of the Appropriation Committee, "You put in my item for dredging Catfish Creek, and we'll push it through the House and Senate. Of course the President will veto it, but I can at least return to my constituents and tell them that I succeeded in getting the bill passed by the House and Senate. We'll let the President shoulder the responsibility." Since individual Congressmen must return to their districts every two years and stand for reelection, such "buck-passing" could become prevalent—by the minority members so as to embarrass the President, by the majority for the sake of reelection. Such items could become so numerous as to entail the necessity of considerable investigation on the part of the President as to what items are desirable and what are "pork". With only ten days to investigate hundreds of items in large appropriation bills, Mr. Tubbs' item might slip by. Such an amendment would no doubt, in the great game of politics, permit Members of Congress to shift to the President the responsibility of deleting items inserted for "mending fences back home."

2. It would increase the influence of the Executive whose powers have already been much expanded. "The Constitution endeavors to give to each of the three departments of government powers by which it can maintain itself against the others. With the acquiescence of the public and of the Congress the Executive has in several ways developed his authority. The use to which the Executive has put the present veto-power and the manner in which he has made his annual message a detailed statement of a legislative programme are related to the question of enlarging the power of veto. He has thus become an important third part of the legislative department of the Federal government.

"In the first forty years of the Constitution the presidents interpreted their veto power as intended to help them maintain themselves against Congress when it became politically hostile and to enable them to prevent enactment of bills that were unconstitutional. Later, however, various presidents based their vetoes upon their own judgment of questions of policy or expediency . . .

"In taking an initiative in connection with legislation the Executive has likewise enlarged his power . . . This duty early presidents interpreted as requiring an account of public affairs and a statement of the subjects upon which they thought Congress should frame legislation. In later years, and especially in the last fifteen or twenty years, presidents have gone beyond a statement of subjects for legislation and frequently have in great detail gone into the precise form laws should take. When making detailed recommendations they have at times sent to committees of Congress drafts of bills prepared in executive departments. Action of this kind they have followed up by endeavoring, through conferences with leaders of Congress and by indirect use of their power of appointment, to obtain enactment of the proposals they have made.

"In this development, as in the gradually enlarged use of the veto-power, the public and the Congress have acquiesced. The

question which arises does not concern the legitimacy of these developments accomplished without any change in the language of the Constitution but whether or not the Executive's powers should be increased by specific alterations in his expressed powers.

"As the Constitution now stands, the Executive probably finds in his authority to use a veto his greatest source of power. President Wilson has said the power of veto is beyond all comparison the President's most formidable prerogative and that the President is no greater than his prerogative of veto makes him; 'he is, in other words, powerful rather as a branch of the legislature than as the titular head of the Executive.' (Congressional Government, pp. 52, 260.)"^{74/}

President Taft in commenting upon the proposal to give to the Executive the power to veto items and clauses of appropriation bills said: "While for some purposes, it would be useful for the Executive to have the power of partial veto, if we could always be sure of its wise and conscientious exercise, I am not entirely sure that it would be a safe provision. It would greatly enlarge the influence of the President, already large enough from patronage and party loyalty and other causes."^{75/} At another time he reiterated this same belief in this language: "The veto power does not include the right to veto a part of a bill. The lack of such a power in the President has enabled Congress, at times, to bring to bear a pressure on him to permit legislation to go through that otherwise he would veto. Appropriation bills are necessary for the life of the government, and if Congress, by putting a 'rider' of general legislation on one of these, says, 'We will throttle the government, unless you consent to this,' it puts the President in an awkward situation. Still, I think the power to veto items in an appropriation bill might give too much power to the President over congressmen."^{76/}

The influence of the President in the American governmental system has already exceeded the fondest hopes of men like Hamilton, who desired a powerful executive. Hamilton could scarcely have hoped that the President would ever acquire under the Constitution of 1787 the dominating influence in American political life which he now occupies. As the Constitution has functioned in actual operation, it is clear that the President's influence in government has been much augmented, and that the powers of Congress have been somewhat reduced over the original expectation. This is the result of two factors, both unexpected and undesired by the framers of the Constitution: (1) the growth of political parties with the President as titular head of his party; (2) the direct election of the President by the people rather than by the electoral college in solemn conclave. These two factors have enabled the President to dominate Members of Congress - through patronage, party leadership, and direct appeal to all the people. To give to the President the additional power of vetoing items and sections of appropriation bills would enable a President to control Congress. Benjamin Franklin at the Convention in 1787, in signalling the dangers which arise from an absolute veto, said: "No good law whatever could be passed without a private bargain with him [the governor of Pennsylvania]."⁷⁷ Franklin's observation on the absolute veto applies with equal force to the proposal to confer on the President the power to veto items in appropriation bills. Such an amendment would make it necessary for individual members of Congress to bargain with the Executive in order to obtain local appropriations. The President could intimate to Tubbs: "If you don't vote in favor of administration proposals, I'll eliminate the appropriation for construction of new battleships in the navy yard located in your district, or for the slum-clearance project for your constituents, or for the new postoffice building" — ad infinitum.

Political observers in the past have often noted that Members of Congress are particularly attentive to the wishes of the President until the major appointments have been allocated. "The effect of the power of appointment upon the President's prestige and control in Congress is shown in the gradual impairment of his influence with Members of Congress as his term lengthens and the offices that he has to fill become fewer in number. This is true of the most popular of Presidents."^{78/} Appreciating this fact, President Wilson in 1913 refrained from making appointments until certain reforms had been enacted by Congress. To confer on the President the additional power to veto items would enable the executive to continue to wield such authority over members of his party. For a Congressman to thwart the President might mean not only the loss of political appointments but also the loss of annual appropriations for public works, Government buildings, river and harbor improvements, etc., for his particular district. Opposition to the President and his program would be political suicide for an individual representative. To argue that a President would not use such a "stick" to keep members of his party in line is to ignore the teachings of history. Presidents, so it has been asserted, have not infrequently kept records of how Senators and Representatives have voted on certain important measures. Presidents, in the past at least, have taken cognizance of assistance rendered by certain faithful supporters in the halls of Congress. It is likely they will again.

3. It would destroy the system of checks and balances established by the Constitution. "This measure if adopted not only would increase the power of the veto, but also would practically destroy the only power which Congress now has over the President, apart from impeachment. For, as a recent writer has observed,^{79/} the only coercion which Congress can make use of against the President, except by impeachment, is by tacking measures distasteful to the President to general appropriation bills, hoping in this way to

compel him to assent to measures which, if presented on their own merits, would surely be vetoed. This power of coercion would be removed by the contemplated amendment.^{80/} To deprive Congress of this check against the policies of a wilful and obstinate President would be to destroy the equilibrium of the Constitution. It would make the Legislature entirely servient to the will of the Executive.

4. It would violate the principles of separation of powers embodied in the Constitution. In its essence the veto power is legislative in nature. "... the President acts as a part of the law-making power when he approves or disapproves an act. This conclusion is strengthened by an examination of the growth of the veto . . . , a remnant of the once important legislative power of the kings. Thus it appears as a matter of historical development as well as of theory that the veto is a legislative power."^{81/} Originally the veto was primarily designed to shield the Executive from encroachments by the Legislature. Without the veto, so Hamilton argued, "the former would be absolutely unable to defend himself against the depredations of the latter."^{82/} The veto power in the Executive would, of course, furnish "an additional security against the enactment of improper laws."^{83/} But it was not expected that the President would substitute his judgment respecting the wisdom, expediency, or desirability of a measure for that of the Legislature. Had the belief been such, the subsequent ratification of the Constitution would have proved even more difficult. To allow the President to set up his individual opinion against that of two thirds of Congress on matters of legislative policy or detail would be undemocratic, and tolerated only when exercised to prevent an actual invasion of executive authority or the passage of hastily-conceived legislation. For such purposes the veto clause of the Constitution was deemed entirely adequate. The occasion for its exercise would be rare.

Early practice was in conformity with this conception of the veto. The power was used sparingly, and then only for the

purpose of maintaining the constitutional system of checks and balances. It was not until Jackson's time that a President began to substitute his purely personal opinion for that of Congress. And people began to speak of an "unconstitutional" exercise of the veto power. But Jackson's conception of the veto power, for reasons which need not be considered here, eventually triumphed. Today the President may exercise his veto upon any grounds he may deem sufficient.^{84/} The item veto is likewise and avowedly discretionary. Hence, in modern practice the item veto and general veto principles have been assimilated. Yet "there is no doubt that the intentions of the framers of the Constitution would not have sanctioned the present interpretation of the clause granting the veto power."^{85/} The purpose of the general veto, as conceived by the framers of the Constitution, had little in common with present day conception of the raison d'être of the item veto. To confer on the President the power to veto individual items in appropriation bills would be to confer on the executive a legislative function entirely foreign to the original concept of the nature and purpose of the veto.^{86/}

Such an amendment would "mix the powers of the executive and legislative departments in a way that was never intended by the framers of the Constitution."^{87/} While the functions of the three departments of the Government cannot be segregated into air-tight compartments, nevertheless Montesquieu's principle of separation of powers is one of the fundamentals of the American system of Government, to be observed wherever possible with only such overlapping as is needed to give effect to the other great principle of checks and balances.

To allow the President to say that the city of Moo can have a postoffice, that the city of Noo cannot, that the city of Poo can, is to confer on the President the broadest type of legislative discretion. He could exercise this item veto almost with impunity, when his own party is in control of Congress. It is

inconceivable that two-thirds of the Members of both Houses would vote to override the veto of a small item for some postoffice in a community which to them is merely a point on the map in some State hundreds of miles away. Only on rare occasions has Congress chosen to override the President even when he has vetoed an entire bill of general interest to the country at large. To expect two-thirds of the Members of each House of Congress to take up their cudgels and fight for an appropriation of interest to only one small locality is to ignore facts in the great game of politics. Even a provision which would only require a mere majority to restore a vetoed item would be a powerful legislative weapon in the hands of a President.

5. It would defeat the legislative intent of Congress.

"Where Congress has appropriated for A and for B, Congress means to say that it gives to each, conditioned upon the gift to the other, and that it gives to neither unless it gives to both. That is the just interpretation of its act, and in most cases is the just discharge of its duty to each and all. The new veto power proposed would give the President the right by the veto of one and the approval of the other, to exercise the function of giving to one an appropriation independent of the other, when Congress has only given it conditioned upon the appropriation to the other. The will of Congress has never been expressed on the President's proposal to give an independent appropriation to any one object. The President takes the initiative—proposes an independent appropriation; and the independent appropriation, upon which Congress has expressed no purpose, becomes law by the President's will, unless overruled by two-thirds of each House of the legislative department. The President originates an appropriation, not suggested by Congress, and makes it law, if more than one-third of either House agrees with him. That one-third may be in the Senate, and may be composed of States which number but 5,000,000 of people, or one-twelfth of the population of the Union. And so by the will of one-twelfth of the people in only one House of Congress, concurring with

the will of the President, money will be appropriated from the Treasury, against (it may be) the unanimous wish of the House of Representatives, and nearly two-thirds of the Senate.*^{88/}

"All administration of popular government, where the people's interests are to be promoted, must depend on mutual concessions and compromises. One interest not only has no right to have exclusive benefit bestowed upon it, but cannot in just administration obtain it. Equality of benefit is due by the Government to those who bear equality of burden. To separate bills in which these benefits are secured, instead of combining the just demands of all in one bill, may endanger the success of some of them, and by intrigue secure the monopoly to others. Combination may be necessary to insure justice to all, and prevent injustice to any, and while it may prevent the evil consequence of what is known as log-rolling, yet it will prevent the no less evil of partial and unjust appropriations.

"The mandate of these amendments is that Congress shall not make dependent appropriations, or that if it does, the President may by his veto sever the nexus of dependence, and defeat either that he pleases, and make the others independent of those defeated, and which Congress had made dependent.

"Your committee does not think Congress should be forbidden to make dependent appropriations.

"Whatever may be said of such a provision in a State constitution, the duties of Congress to the thirty-eight States of the Union make it necessary that the expenditure for all the States shall be made proportionate to their several needs. This involves the practice of dependent appropriations, because, if made for each in separate bills, the passage of one may be secured and of others defeated; a result which would be marked by injustice and be a violation of constitutional duty.

"If the question be asked why the duty of Congress to the States makes proportionate and dependent appropriations necessary, the answer is found by a reference to the Constitution.

"The United States must 'protect each of them against invasion.' (C.U.S., Art. IV, §4.) Forts are needed for each. The protection due to all makes fortifications proper for each, and an independent appropriation for one may be a violation of duty to the others, and an unconstitutional discrimination between equal claimants to protection.

"Congress has power 'to regulate commerce with foreign nations and among the several States,' etc. (C.U.S., Art. I, §8, c. 3), and 'to lay and collect taxes,' etc. (Id., c. 1). But 'no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another.' (Id., §9, c. 6.) Now, if, as is maintained, the improvements of rivers and harbors be regulations of commerce, Congress must avoid the preference forbidden by making dependent appropriations, and not give the preference to any by making them independent.

"The same views may be taken of the postal power and duty; of the power and duty to establish courts, etc.; of providing arms for the militia, etc.; of the coinage power, etc.

"Your committee do not mean to say that such appropriations must be embraced in one bill, in order to secure equality, but that this practice should not be forbidden.

"But the proposition made in the amendments suggested does not forbid Congress to combine appropriations for various objects; but when Congress has bound them together as dependent appropriations it gives the President the power by his veto to sever the nexus which Congress has created, and give the force of law to one and to affix his veto to another."⁸⁹

6. The amendment is entirely unnecessary. The argument that the President must approve general appropriation bills, the

"pork" with the good, or permit the wheels of government to stop is no longer valid. Formerly Congress on every alternate year had to adjourn on March 4. Appropriation bills were often delayed until the closing sessions. In those days, no doubt, the practice of inserting "riders", of "tacking" undesirable appropriations often coerced the President into approving bills with many undesirable provisions. But with the adoption of the "lame-duck" amendment Congress is no longer obliged to adjourn on March 4. Sessions may be prolonged until needed appropriations in a form acceptable to the President have been passed by Congress. Even in the older days several Presidents with the courage of their convictions vetoed general appropriation bills which contained undesirable features. President Wilson on one occasion vetoed an important financial measure just three days prior to the termination of the congressional session.^{20/} The objectionable sections can generally be deleted and a new bill passed without encountering insurmountable legislative snarls.

4 In recent years the President is so closely in touch with legislation as it progresses through each house that he can make his opposition to particular items or provisions known before the bill is presented to him for signature. By personal consultation with party leaders, by his use of liaison officers, by his supervision over the budget, by special messages to Congress, or even by radio appeals to the people, the President can exercise no little influence over details in appropriations. Or to use the language of President Taft: ". . . there are other ways of killing a cat than by choking it with butter, and it is a great deal easier—it does not rock the boat so much—to use one's influence with the legislators to prevent objectionable bills [or items?] passing than it is to wait until they do pass and then veto them."^{21/}

An insistence upon the proper functioning of the budget system would render such an amendment superfluous. President Taft

indicated on different occasions his disapproval of an amendment authorizing the executive to veto items or clauses in appropriation bills when he said: "If it is urged that the President should have the power to veto items in an appropriation bill to restrain Legislative extravagance, the answer is that this is not the best way."^{22/} "The right way, as shown in England and other countries where expenditures have, of necessity, to be counted and proportioned to resources, is a budget, stated at the beginning of a session, which shows the sources, first, and then the possible expenditures."^{23/} "It is wiser to leave the remedy for the above to the action of the people in condemning at the polls the party which becomes responsible for such riders than to give, in such a powerful instrument, a temptation to its sinister use by a President eager for continued political success."^{24/}

Congress can, by its own rules, consolidate the functions now exercised by the Ways and Means and the Appropriation Committees. By requiring these committees to coordinate their activities, by insisting on a balancing of income and outgo, by demanding additional taxes whenever a bill proposes expenditures in excess of the budget estimates would be the best insurance against the passage of undesirable items in appropriation bills.

Furthermore, Congress can, by its own rules, eliminate the practice of attaching "riders" to appropriation bills. "As early as 1837 the House of Representatives adopted a rule to the general effect that legislation changing existing law should not appear in appropriation bills."^{25/} In substance this same rule, with amendments and interpretation, continues to govern the House. The Senate has a similar rule, less rigidly adhered to. An insistence upon the strict application of this rule, except in a clear emergency, would eliminate "riders". Such benefits can be obtained without a constitutional amendment.

7. It would be an uncertain grant of power. The language of the usual amendments designed to confer on the President the power

to veto items or provisions in appropriation bills has been given varying interpretations in the several States. Seemingly an authorization, "to disapprove of any item of any bill making appropriations of money, embracing distinct items" would require little judicial construction.

Yet such phrases have given rise to no little litigation in several States.^{26/} For example, the Pennsylvania Supreme Court has construed the expression "to disapprove of any item" to include the right "to reduce any item." In that case^{27/} the Pennsylvania legislature had appropriated \$5,500,000 for school purposes for each of two years. The Governor approved of the object of the bill, but indicated his disapproval of \$500,000 of said appropriation, thereby reducing the biennial appropriation from \$11,000,000 to \$10,000,000. He merely reduced the entire appropriation one-eleventh. The Court held that such proceedings were proper under an authorization "to disapprove of any item." It is conceivable that the Supreme Court of the United States might place a similar interpretation on language of like import. In such an event, the President could modify legislative appropriations almost at will; he could delete some items; he could reduce others; he could approve the remainder. This would in effect shift control of the purse strings of the government from Congress to the Executive.

Again one might assume that the word "item" would result in no ambiguity. However, the State Courts have disagreed radically in their interpretation of what constitutes an "item" in an appropriation bill. A few of the problems which can arise in this connection will be apparent if one analyzes an actual appropriation bill, for example the Interior Department Appropriation Act for 1937.^{28/} In that act Congress authorized, "in all", "not to exceed" \$2,606,475 for 19 nonreservation Indian boarding schools as follows: "Phoenix, Arizona: For four hundred and seventy-five pupils, including not to exceed \$1,500 for printing and issuing school paper, \$168,625; for pay of

superintendent, drayage, and general repairs and improvements, \$25,000; in all \$193,625;

"Sherman Institute, Riverside, California: For six hundred and fifty pupils", etc.^{22/}

These sums were part of the appropriation made for the Bureau of Indian Affairs, a unit of the Department of the Interior. Under an amendment authorizing the President to approve or disapprove of "items" in an appropriation bill, could the President have vetoed the appropriation of \$1,500 for printing at Phoenix or would he have been obliged to veto the entire sum of \$193,625 allocated to the Phoenix school, or would it have been necessary to veto the entire "in all" appropriation of \$2,606,475 for the nonreservation boarding schools? Had Congress provided an "in all" appropriation of \$30,000,000 for the Bureau of Indian Affairs and then proceeded to enumerate the schools (as was done in the act under discussion), would it have been necessary to veto the entire appropriation of the Bureau in order to disapprove of the \$1,500 for printing at Phoenix? In other words, what appropriations in this bill are "items"? The minute sums included under such clauses as "provided that not to exceed" or the "in all" appropriation for particular units? The State Courts, when confronted with this problem, have arrived at irreconcilable conclusions. For example, in the case of State University v. Trapp (1911) 28 Okla. 83, the Oklahoma Court "held that a bill making an appropriation for the state university, and apportioning various sums out of the appropriation for specific purposes in connection with the operation of the university, embraced only a single item, and that a constitutional provision permitting the governor to disapprove any item in an appropriation bill embracing distinct items did not apply to a bill containing only a single item, with directions as to how that item should be expended, so did not apply to the governor's attempt to cut down a few of the sums apportioned out of the single item of appropriation."^{100/}

But in the case of People ex rel. State Bd. v. Brady (1917)

277 Ill. 124 "where an act making an appropriation for the state board of agriculture, the state beekeepers' association, and other named associations, appropriated to the board of agriculture a gross sum, 'to be used as follows,' enumerating forty-four separate purposes, opposite each of which a specific amount was set down,—it was held that the gross amount was not to be regarded as a single-item, embracing what followed as directions as to how it should be used; but that each of the following items constituted an 'item,' . . ."^{101/}

If the Supreme Court of the United States were to follow the Oklahoma decision, it would be necessary for the President to veto the "in all" item of \$2,606,475 appropriation for nineteen schools should he desire to eliminate the \$1,500 printing item for Phoenix. In such an event the proposed amendment would be a nullity. It would be no more effective than the present general veto provision. Congress could provide an "in all" appropriation of \$600,000,000 for the War Department. Under such a constitution the grand total for each department would constitute the "item" and the further allocations would constitute "directions" or "regulations" governing the expenditure of said "item."

On the other hand were the Supreme Court to follow the Illinois conception of what constitutes an "item" it would be impossible to enact dependent or conditional appropriations. "To allow a single bill entire, inseparable, relating to one thing, containing several provisions, all complementary of each other and constituting one whole [just as the 19 nonreservation boarding schools constitutes an integrated educational program for Indians], to be picked to pieces and some of the pieces approved and others vetoed, is to divide the indivisible, to make one of several, to distort and pervert legislative action, and, by veto, make a two-thirds vote necessary to preserve what a majority passed allowable as to the entire bill, but inapplicable to

a unit composed of divers complementary parts, the whole passed because of each."^{102/} Such an interpretation would, furthermore, furnish the President with almost unlimited power. In the example cited above the appropriation for the Phoenix school might be vetoed merely because the Senators or Representatives from Arizona had disagreed with the President on World Court or bonus issues. When one considers that four of the big appropriation bills of the last session were not approved by the President until after Congress had adjourned, one can appreciate the danger a Congressman would run by incurring the displeasure of the President. Every single individual item of interest to his particular district or State could be deleted, and if Congress had adjourned there would be no opportunity to restore the vetoed items.

"These objections to the proposition are fatal to it. They are apparent on the surface of the question; but he knows but little of human affairs and has but little experience of the unseen and invisible consequences of political empiricism, who does not shrink from trying this experiment, which, once adopted cannot be recalled; and the operation of which in the machinery of the Government is concealed from our knowledge; especially when the proposition disturbs the balance between executive and legislative power over money, and vests in the former a controlling authority over the action of the latter, unknown in our constitutional history and dangerous to the equality of right and privilege, or burden and benefit of the members of our Union."^{103/}

Footnotes

1. See Max Farrand, Records of the Federal Convention, (New Haven, 1927), 3 vols.; Jonathan Elliot, Debates, (Philadelphia, 1859), 5 vols.; William M. Meigs, The Growth of the Constitution, (Philadelphia, 1900).
2. James Bryce, The American Commonwealth, (New York, 1928), I, 58.
3. For copies of the early charters see Poore, Federal and State Constitutions and Charters, (Washington, 1877), 2 vols. In Maryland the Burgesses disputed the power of the governor to veto bills.
4. On the subject matter of this paragraph see Edward C. Mason, The Veto Power (Boston, 1890), Ch. I, passim.
5. Articles II and I of the Articles of Confederation.
6. Hamilton and Reed seem to have favored the restoration of the absolute veto—Elliot, Debates, IV, 623; V, 385.

7. The word "veto" was not used in the debates of the Convention, at least as reported. The word was impolitic. This power was referred to as a "qualified negative".
8. The New York Constitution of 1777 gave the veto to the Governor and the Judges of the highest Court acting together.
9. Massachusetts had restored to the Governor in 1780 the veto in qualified form.
10. From the debates it appears that the Judiciary was excluded lest it be subjected to political influence of the executive, and be unable to render subsequently an impartial judicial opinion on constitutional questions.
11. The veto power, however, was not restored in Rhode Island until 1909; and the Governor of North Carolina to this day has no veto power.
12. Article I, sec. 5 of the provisional Constitution of the Confederacy.
13. Article I, sec. 7 Cf. Jefferson Davis, The Rise and Fall of the Confederate Government, (New York, 1881), I, pp. 641, 654.
14. Niels H. Debel, The Veto Power of the Governor of Illinois, (Urbana, 1917), p. 23.
15. See typewritten list compiled by the Legislative Reference Service, Library of Congress on March 24, 1936, entitled "Item Vetoes: Text of State Constitutional Provisions". The States with item veto provisions are: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.
16. The language of Article I, §7, conferring on the President the power to veto bills, is very explicit: "Every Bill . . . shall . . . be presented to the President . . .; If he approves he shall sign it, but if not he shall return it." Such language almost beyond doubt requires the President to approve or disapprove a bill in its entirety. "The Federal Executive has never attempted the exercise of, or claimed, the right to veto parts of measures submitted to him by Congress, and to approve the remainder . . . [He is] bound to accept or reject a bill as a whole." (Willoughby, Constitutional Law, (New York, 1929), 2d ed., II, p. 659-660). The State Courts, without exception, have held that the governor has no power to approve parts and disapprove the remainder of bills, unless the State Constitutions have expressly conferred on him such power. In view of the State practice, the language of the federal Constitution, and the practical construction acquiesced in for a century, it seems certain that the power to veto items or clauses in appropriation bills can only be conferred on the President by a constitutional amendment.
17. Richardson, Messages and Papers of the Presidents, (Washington, 1898), VII, p. 242.
18. Richardson, *Ibid.* VII, 528-529; VIII, 138-139.
19. H. Res. 46, 44th Cong., 1st Sess., Congressional Record, p. 500.
20. Annual Report of the American Historical Association, 1896, vol. II, article by Herman V. Ames, "Proposed Amendments to the Constitution," Appendix A, nos. 1414, 1424, 1450, 1476, 1479, 1480, 1489, 1495, 1502, 1562, 1564, 1567a, 1568, 1574, 1576, 1579, 1581, 1586, 1587, 1593, 1595, 1600, 1610a, 1645, 1655, 1659, 1662, 1665, 1696, 1708, 1728; "Proposed Amendments to the Constitution" by Charles C. Tansill, 69th Cong., 1st Sess., Sen. Doc. 93, Nos. 11, 28, 83, 147, 149, 151, 173, 186, 200, 201, 221, 231, 374, 378, 586, 696, 726, 773, 781, 799, 821, 846, 862, 874, 881, 882, 886, 929, 958, 970, 997, 1005, 1025, 1033, 1097, 1098, 1233, 1235, 1279; 70th Cong., H. J. Res. 70; 71st Cong., H. J. Res. 35; 72nd Cong., H. J. Res. 89 and 168; 73rd Cong., H. J. Res. 154 and S. J. Res. 76; 74th Cong., H. J. Res. 552, 622, and 623, S. J. Res. 281.

21. These bills were introduced on March 21 and April 14, 1879 by Senator McMillan of Minnesota and Senator Morgan of Alabama.
22. Congressional Record, 46th Cong., 2d Sess., p. 751.
23. See House Report No. 1879, 49th Cong., 1st Sess. (Quoted *infra*).
24. Congressional Record, 49th Cong., 1st Sess., p. 3735.
25. Ibid. 47th Cong. 2d Sess., p. 2137.
26. Ibid. 47th Cong. 2d Sess., p. 3611; this Resolution had been introduced by Mr. Flower of New York.
27. Congressional Record, 48th Cong., 1st Sess., p. 3164.
28. Ibid. 48th Cong., 2d Sess., p. 104.
29. Ibid. 48th Cong., 2d Sess., pp. 304, 1492, and 1876.
30. Ibid. 48th Cong., 1st Sess., p. 4267.
31. Hearings, 63d Cong., 1st Sess., "Veto Power of President", 25 pp.
32. It must be understood that these arguments are the opinions of others. Wherever possible the arguments have been expressed in quoted language. For the sake of brevity arguments have sometimes been paraphrased, and for the sake of clarity some conclusions of a corollary nature have been further elaborated.
33. Richardson, Messages and Papers of the Presidents, vol. IX, p. 4197.
34. Ames, op. cit., p. 133.
35. Mason, op. cit., p. 138.
36. Calvin P. Godfrey, The Veto (Columbus, 1912), p. 9.
37. Bryce, op. cit., vol. I, p. 215.
38. Statement by Representative Curry of California in Hearings on H. J. Res. 15, 63d Cong., 1st Sess., p. 8.
39. Ibid., p. 4.
40. Debel, op. cit., pp. 120-125.
41. Richardson, op. cit., vol. VIII, p. 121.
42. Ibid., p. 138-139.
43. North American Review, August, 1916, pp. 178-179.
44. Richardson, op. cit., vol. VIII, p. 778.
45. Godfrey, op. cit., p. 9.
46. Editorial by George Harvey in North American Review, August, 1916, pp. 179-180.
47. Chamber of Commerce of the United States, Referendum No. 18, "On a Proposal for Amendment of the Federal Constitution to Permit the President to Veto Separate Items or Provisions in Appropriation Bills", (1916), p. 3.
48. Cf. Hearings on H. J. Res. 15, 63d Cong., 1st Sess., p. 9.
49. Charles A. Beard, Readings in American Government and Politics (New York, 1909), p. 444.
50. Hearings on H. J. Res. 15, 63d Cong., 1st Sess., p. 7.
51. Chamber of Commerce, op. cit., pp. 3-4.
52. Richardson, op. cit., vol. V, p. 462.
53. Ibid., vol. II, p. 229.
54. Congressional Record, vol. 48, pp. 8382-83.
55. President Hayes vetoing the Army Appropriation bill in 1879; see Richardson, op. cit., vol. VII, p. 531.
56. Cf. Hearings on H. J. Res. 15, 63d Cong., 1st Sess., p. 6 (statement by Representative Curry of California).
57. Hearings on H. J. Res. 15, 63d Cong., 1st Sess., p. 12.
58. Supra, pp. 14-15.
59. Letter from Governor Thomas E. Campbell to Representative Hastings of Oklahoma, printed in Congressional Record, vol. 59, p. 6001. For an interesting series of such letters written in 1919-20, see pp. 6000-6006.
60. Letter from Budget Commissioner, C. A. Lemmers, p. 6002.
61. Letter, p. 6002.
62. Letter, p. 6003.
63. Letter, p. 6003.
64. Letter, p. 6003.
65. Letter, p. 6006.

66. Letter, p. 6002.
67. Letter, p. 6002.
68. Letter, p. 6002.
69. Letter, p. 6003.
70. Letter, p. 6003.
71. Letter, p. 6004.
72. Again it must be understood that the arguments herein advanced are wherever possible expressed in the language of others. Generally the item veto proposition has not reached the stage which engenders much verbal opposition. It has, therefore, been necessary to advance in some cases what are conceived as possible objections to the item veto. They are expressed in argumentative form, and must not be understood to embody the considered or final judgment of the writer.
73. Chamber of Commerce, op. cit., p. 14.
74. Chamber of Commerce, op. cit., p. 14-15.
75. William H. Taft, Our Chief Magistrate and His Powers, (New York, 1916), p. 27.
76. William H. Taft, The Presidency, (New York, 1916), p. 19-20.
77. Farrand, op. cit., I, p. 99.
78. Taft, op. cit., pp. 54-55.
79. Quoting Bryce's American Commonwealth, [London, edition of 1888], vol. I, pp. 207-211.
80. Mason, op. cit., pp. 137-138.
81. Mason, op. cit., p. 112.
82. The Federalist, No. LXXIII (Lodge's ed.), p. 457.
83. Ibid., p. 458.
84. W. W. Willoughby, Constitutional Law (New York, 1929), 2d ed., II, p. 658.
85. Stanwood, History of the Presidency (1912), vol. II, p. 228.
86. Cf. Mason, op. cit., pp. 138-140.
87. As summarized by M. A. Musmanno, Proposed Amendments to the Constitution, House Doc. No. 551, 70th Cong., 2d Sess. (Washington, 1929), p. 70.
88. House Report No. 1879, 49th Cong., 1st Sess., p. 3.
89. House Report No. 1879, 49th Cong., 1st Sess., pp. 1, 2.
90. See Norman J. Small, Some Presidential Interpretations of the Presidency (Baltimore, 1932), p. 191.
91. Taft, The Presidency, p. 14.
92. Taft, Our Chief Magistrate and His Powers, p. 28.
93. Taft, The Presidency, p. 21.
94. Ibid., p. 20.
95. Chamber of Commerce, op. cit., p. 15.
96. For a discussion of these conflicting decisions on item veto provisions in the State Constitutions see article by James D. Barnett, "The Executive Control of the Legislature", American Law Review, Vol. 41 (1907), p. 384 et seq.; and annotations in 55 L. R. A. 882, and 35 A. L. R. 600.
97. Com. ex rel. Elkin v. Barnett, 199 Pa. 161; 55 L. R. A. 882.
98. Public No. 741, 74th Cong.
99. Public No. 741, 74th Cong., pp. 20-21.
100. 35 A. L. R. 604.
101. 35 A. L. R. 604.
102. State ex rel. Teachers and Officers v. Holder (1898) 76 Miss. 158, 182.
103. House Report No. 1879, 49th Cong., 1st Sess., p. 3.

Vernon L. Wilkinson
 August 13, 1936
 Reran May 12, 1953

Statement of the Honorable
Donald T. Regan
Secretary of the Treasury
on Proposals for a Line-Item Veto
Submitted for the Record
Subcommittee on the Constitution
of the
Senate Committee on the Judiciary
April 1984

I am pleased to have this opportunity to offer the views of the Administration on proposals for a line-item veto. As President Reagan stated in his State of the Union Address in January, this Administration strongly favors a constitutional amendment to give the President line-item veto authority. We believe that such authority would be a valuable tool for controlling excessive federal spending and reducing budget deficits. We urge this Committee to move forward expeditiously on a line-item veto amendment.

THE NEED FOR A LINE-ITEM VETO

The case for a line-item veto is, in our view, compelling.

Consistency With the Constitution

A line-item veto would fit well with our constitutional framework. As part of our system of checks and balances, the Framers gave to the President the power to veto laws that he believes to be unwise, subject to a Congressional power to override his veto by a two-thirds vote. The Presidential veto serves as a vehicle by which the Executive brings a unique institutional perspective to the process of enacting laws -- that

of the official assigned to administer those laws. The Framers believed, in our judgment correctly, that the special experience and perspective that accompany the Presidency warrant granting the individual holding that office the power to disapprove proposed legislation. Although the Framers' philosophy might be criticized on the ground that it makes the process enacting laws more cumbersome, they were correct in believing that this process results in more careful decision-making and wiser laws.

The absence of line-item veto authority from the Constitution does not reflect a decision by the Framers to deny that power to the President; the Framers simply never considered the issue. Undoubtedly, they anticipated that Congress would provide funds by passing separate appropriations bills for discrete programs or activities, rather than omnibus bills encompassing a variety of related and unrelated matters. Until about the time of the Civil War, Congressional practice was in accordance with this expectation. Presidents were thus able to sign or veto appropriations bills based upon the merits of the programs being funded and the need for the particular amounts.

Since the Civil War, however, Congress has increasingly relied on appropriations bills that cover a variety of programs. This trend has made it more difficult for the President to carry out the function the Framers intended in granting him veto authority, for he must judge a particular appropriation not on its own merits, but as part of a large package of often unrelated items. Under these circumstances, the President's veto must necessarily be used in a more limited way than the Framers undoubtedly imagined, and many wasteful appropriations slip by under the protective wing of essential or politically popular programs.

In response to similar conditions at the state level, the constitutions of 43 states grant the governor some form of line-item veto authority. The use of these powers -- which vary in scope from state to state -- has not drawn opposition, and I am aware of no serious effort to limit or eliminate a governor's line-item veto authority. Clearly, the state experience is that a line-item veto appropriately balances the powers of the executive and legislative branches, and accords with each state's constitutional separation-of-powers system.

The state experience suggests that a constitutional amendment granting the President line-item veto authority would work well in a federal context, filling a constitutional lacuna by giving effect to the principle that the President should pass judgment on the wisdom of legislation before it becomes law.

Budgetary Concerns

Presidents have sought line-item veto authority since President Grant. Today, however, that need has become even more urgent.

In the last decade, federal spending surged out of control. Total Federal spending tripled during the period 1969-1980 and grew by nearly 17.5 percent in the year before this Administration took office. These spending increases were financed in large part by automatic tax increases produced by inflation -- popularly known as "bracket creep." The result of this inflation-tax windfall was that the tax burden on the average American increased dramatically during this period without Congress having to vote to increase taxes. In the Economic Recovery Tax Act of 1981 (ERTA), this Administration, working with the Congress, put a stop to this process by enacting legislation that reduced marginal tax rates by 23 percent during

the period 1981 to 1983, and stopped further bracket creep caused by inflation by indexing tax brackets and personal exemptions starting in 1985.

On the spending side, we have also jointly made considerable progress by cutting back the rate of growth of federal spending. However, more needs to be done; budget deficits remain a problem and must be reduced.

Some now call for reducing deficits by reversing the tax reforms of 1981, and by increasing the taxes paid by the average American. The Administration, however, opposes "solving" the deficit problem by raising taxes, an action that would remove resources from the productive private sector, stifle incentives and economic growth, and ultimately increase deficits. Budget deficits must not be reduced by putting our economy in the strait-jacket of excessive taxation. Instead, we must force government to live within the means of the people.

Moreover, proposals to increase taxes are grounded on a faulty assumption -- that federal deficits are too high because federal taxes are too low. The roots of the deficits problem, however, are in excessive federal spending. ERTA's 23% reduction in marginal tax rates approximately offset the increases in the tax burden brought about by the combination of bracket creep and higher payroll taxes during the period fiscal 1981-84. But it barely put a dent in the increases in the tax burden that occurred between 1965 and 1980. And indexing only keeps the future burden of the federal income tax from rising because of inflation; it does not, as the proponents of tax increases seem to believe, cut taxes.

Thus, the Administration believes that the solution to the deficit problem must come primarily from the expenditure side and the results of economic growth. As the Grace Commission report

showed, there is plenty of room for additional cuts in the federal budget. We must reduce real program levels, and this requires restraint in the authorizing and appropriations process. By controlling federal spending and strengthening economic growth we can solve the deficit problem.

A crucial tool in controlling federal expenditures is the President's power to veto appropriation bills he believes to be excessive. As has already been noted, however, under current law, when a President is presented with an excessive appropriations bill, he is often faced with two undesirable choices: signing a bill that contains unnecessary spending or vetoing a bill that contains urgently needed appropriations.

Unfortunately, special interests have been successful in taking advantage of this phenomenon by attaching unnecessary spending to essential appropriations bills, knowing that the President will be reluctant to veto an entire bill on account of such provisions. This tactic has become even more tempting to Congress in recent years, as the failure to enact individual appropriations bills has made necessary the passage of continuing resolutions. For the President, vetoing a continuing resolution generally carries with it a serious disadvantage in addition to those that accompany vetoing an appropriations bill that encompasses a variety of subjects -- doing so can cause large portions of the government to run out of spending authority. Even if the President does veto a continuing resolution -- as President Reagan has done -- there is never time for him to reach agreement with Congress on its "minor" provisions, which can be quite significant in dollar terms.

Line-item veto authority would provide the President with a much-needed option between vetoing or signing an entire bill: he could veto the appropriation items he considers unreasonable,

sending them back to Congress for possible override, and he could approve the remainder of the bill, on which both he and Congress agree. No longer would special interest programs or "pork barrel" projects be able to escape a Presidential judgment.

ARGUMENTS AGAINST A LINE-ITEM VETO

A number of arguments have been made against a line-item veto amendment. We find none convincing, but two deserve comment.

Not a Panacea

Ironically, one of the principal arguments that has been advanced against a line-item veto constitutional amendment is that such an amendment would not solve the federal deficit problem. Opponents of a line-item veto amendment point out that the President could not use it to cut permanently appropriated funds (so-called uncontrollable spending), which amount to approximately 55 percent of total federal spending, or to cut appropriations committed from previous years, which amount to approximately 18 percent of federal spending. Thus, for example, the House Budget Committee has asserted that of the \$925 billion it estimated would be spent in Fiscal 1985, only \$86 billion of "non-defense discretionary spending" could realistically be said to be subject to the line-item veto.

The Administration agrees that, by itself, the grant of line-item veto authority to the President would not cause federal budget deficits to disappear. Indeed it is because we agree that the line-item veto is not in and of itself enough that we have supported a balanced-budget amendment. I wish to reiterate our support for such an amendment.

Line-item veto authority would, however, be a valuable tool for reducing federal expenditures. It is a tool that would be targeted at the most wasteful and unnecessary programs: the ones that currently must be attached to urgent legislation in order to avoid particularized scrutiny that would certainly lead to a veto. The mere fact that the President had line-item veto authority should prevent some wasteful proposals from passing the Congress. Most others would be unable to survive a Presidential veto.

Thus, although a line-item veto amendment would not be a panacea for excessive spending, its adoption would be an important step toward bringing spending under control.

Invasion of Congressional Prerogatives

Another argument against the line-item veto is that granting the President such authority would invade legitimate Congressional prerogatives or would fundamentally reorder the division of powers between the executive and legislative branches in a way inconsistent with our Constitution. We disagree.

Under a line-item veto, Congress would retain its authority to determine how specific it wishes to be in appropriating particular amounts for particular programs. The only difference brought about by a line-item veto would be that each such appropriation would become subject to Presidential review. Congress can hardly be said to have a legitimate interest -- let alone a prerogative -- in preventing the President from judging each spending program that it wishes to fund on its individual merits.

Nor would adoption of a line-item veto proposal be a departure from the Framers' plan for dividing power. It would simply compensate for the developments outlined earlier that have

undercut the President's veto authority, restoring the balance of power between the branches that the Framers sought to establish. Furthermore, the experience of the states belies the claim that granting the President line-item veto authority would unduly limit Congress' legislative power.

But even assuming for the sake of argument that a line-item veto amendment would diminish the current spending powers of Congress to some degree, the proposal nevertheless seems clearly warranted. Many students of our system, including many Congressmen, have noted that Congress has great difficulty in limiting spending. Increasingly in recent years, special interest groups have succeeded in bludgeoning Congress into spending through a logrolling process in which coalitions of groups -- none of them strong enough by itself to obtain a Congressional majority -- work together to achieve the mutually shared end of dipping into the public purse.

Federal spending cannot be brought under control in these circumstances; granting the President line-item veto authority offers one way to do so. The proposal is narrowly drawn -- only appropriations bills would be subject to a line-item veto -- and thus the line-item veto does not increase Presidential power any more than is necessary to bring federal spending under control.

STRUCTURING A LINE-ITEM VETO

The Power to Reduce Line-Items

The Administration believes that in order to be most effective as a tool for controlling spending, a line-item veto amendment should make clear the President's authority to reduce particular line-items as well as to eliminate them entirely.

Excessive spending does not occur solely in the form of programs that are completely unnecessary; it often comes in the form of unrequested additional appropriations for deserving programs. The President should have the power to act against it in either form.

The Administration recognizes that the power to reduce expenditures is a broad power, but it is essential to achieve the ends of the line item veto proposal. The President should not be put to a choice of "zeroing out" a worthwhile program because Congress has appropriated too much money for its administration. In those states that allow their governor to reduce appropriations the power has been used without adverse consequences.

Two-thirds vs. Majority Override

Some have suggested that a line-item veto be structured so as to permit Congress to override vetoes of particular line items or reductions of line items by a less than two-thirds vote. The Administration believes that allowing an override by a less than two-thirds vote would be an unjustified departure from the Framers' design. We oppose departing from that design, especially because doing so could undermine the amendment's effectiveness as a means of controlling federal spending.

Amendment vs. Bill

Some proponents of a line-item veto have suggested that it could be accomplished by legislation. For example, it has been suggested that Congress declare each line-item in a piece of appropriations legislation as a separate bill, on the theory that the President could then veto line-items if that was his desire.

To be effective, a statutory line-item veto bill would have to be "binding"; that is, it could not provide that each line-item in a piece of legislation is a separate bill unless the legislation provides otherwise. Such a provision, of course, would allow Congress to exempt line-items from the veto, and render the statutory line-item veto useless. Even if legislation were drafted to preclude Congress from exempting line-item from the veto, however, that legislation would still be subject to repeal by Congress, and thus would not be as effective as an amendment.

A statutory line-item veto may also raise constitutional questions. Arguably such legislation would violate the presentment clause of the Constitution, especially if it were drafted as a statutory provision binding on Congress.

For these reasons, the Administration believes that a constitutional amendment would be preferable to a statutory line-item provision because it would be more effective and would resolve any ambiguity about the constitutionality of the measure.

CONCLUSION

When he was Governor of California, the President had line-item veto authority, and used it with great effectiveness in eliminating wasteful and special interest spending. Indeed, not one of his vetoes was overridden. The line-item veto fits well within our constitutional framework, filling a gap to make the Framers' intention more effective. Moreover, it is needed urgently as a mechanism for bringing federal spending under control. We urge this Committee and the Congress to approve a line-item veto amendment.

Testimony
of

The Honorable James R. Thompson
Governor, State of Illinois

Before
the

Subcommittee on the Constitution
Committee on the Judiciary
United States Senate
The Honorable Orrin G. Hatch, Chairman

Mr. Chairman and Members of the Subcommittee, I appreciate this opportunity to submit testimony for the record on an issue of considerable interest to the State of Illinois - Presidential authority to line-item veto. Presently 43 of the 50 Governors, including myself, are granted this authority. I have found the line-item veto an essential tool when balancing policy and program objectives with fiscal constraints and encourage the Subcommittee to begin drafting legislation to provide this power to the President of the United States.

Few issues have ignited as much public discussion this election year as the national debate on reducing the federal budget deficit. Economists may differ on the short-term impact of the deficit on our nation's economy, but there is growing sentiment that we cannot afford to continue along this path much longer before we confront some very serious fiscal problems.

As a result, the public is understandably worried about the long-range consequences of the distorted fiscal situation. And they argue, quite rightly, that revenues and expenditures must come into balance to prevent future economic stagnation. It is the obligation of public officials to respond.

Leaders in Washington and around the country are beginning to recognize that the federal deficit, hovering around \$200 billion, poses a real and present danger to the continued economic health of the nation. The deficit may abort the economic recovery we have painstakingly worked to achieve. High interest rates, a continued overvalued dollar overseas that hurts exports and the specter of inflation remain a constant threat in the face of an uncontrolled federal deficit.

One of the most disturbing aspects of the problem is the difficulty Congress and the President have in exercising a significant degree of control over the widening gap between federal revenues and spending. There are serious structural flaws that inhibit the construction of a sound federal budget.

The deficit reduction packages now being considered by Congress are an excellent start and indicate a willingness to tackle the tough decisions that lie ahead. What is also needed, however, is a provision providing the President greater flexibility to reduce spending.

One partial solution is also a simple one, practiced with great success in 43 state capitols -- the line-item veto. A line-item veto would enable the President, subject to Congressional override, to make selective cuts in appropriations bills, thereby eliminating the "all or nothing" decision with which the President is currently confronted. Such authority could result in great strides, both real and symbolic, toward fiscal restraint and reducing the burgeoning federal budget deficit.

Under the current situation, the President is faced with total acceptance or rejection of a comprehensive appropriations measure that can total hundreds of billions of dollars. His choice usually includes approving needless spending or disapproving in whole worthwhile legislation containing riders of dubious merit.

As a governor, I have been faced with this situation countless times. The line-item veto has been a valuable tool in eliminating excessive or

inappropriate spending. I have used it often in my tenure as Governor, reducing Fiscal 1977-84 aggregate total funds budget appropriations by some \$3 billion. Not to have done so would have brought on fiscal calamity.

There is some concern that giving the President line-item veto authority would undermine the legislative powers of Congress and give undue influence to the executive branch in the federal budget process. The experience of the 43 states whose governors have this power argues against this concern.

Governors have used the line-item veto as an effective tool in balancing state budgets. In these states, the line-item veto has not proven to be an abrogation of authority from the legislature to the Governor, but rather an essential way to manage budgets that tend to get out of control. The line-item veto is especially critical for those states with a constitutional mandate to keep budgets in balance.

To rebut the charge that the line-item veto could result in a flagrant misuse of executive authority, I point simply to my record as Governor. As the chart illustrates, use of the veto has fluctuated greatly during my tenure, at times reflecting changes in the revenue base caused by a decline in economic activity. The following chart indicates the total appropriations passed by the Illinois General Assembly, the amount reduced by line-item veto, and the per cent difference for Fiscal Years 1977-1984.

Fiscal Year	Appropriations (in thousands)	Amount Vetoed (in thousands)	Percent
1977	\$ 10,370,132	\$ 496,488	5
1978	10,751,466	178,528	2
1979	12,437,913	969,578	8
1980	13,799,024	321,258	2
1981	14,780,063	87,963	0.5
1982	14,670,836	381,455	3
1983	14,575,455	286,531	2
1984	16,405,882	206,403	1

The Constitution established the right of the President to veto as part of the delicate system of checks and balances. The separation of powers doctrine established this right as a way to give the President more authority over the actions of the legislative branch. However, our founding fathers never envisioned the elaborate budget system required by the growth in the federal government. As a result of this complicated funding scheme, which uses only 13 appropriations bill for all of the programs and operations of the federal government, the President has been stripped of much of his effectiveness in using the veto.

The ever-increasing size and complexity of the federal government, coupled with the growing use of omnibus legislation, has also weakened the power of the Presidential veto. The legislative process has often attempted to thwart the President's veto authority by attaching riders unfavorable to the Executive Branch to a popular piece of legislation. An annual ritual is performed at the conclusion of each fiscal year by the passage of an all-inclusive continuing appropriations resolution to fund government agencies when regular appropriations have not been enacted. This serves as a vehicle for pet projects that wouldn't survive a vote or Presidential signature if moved as separate legislation. These practices are unfortunate and would be less likely if the President had line-item veto authority.

Efforts of this Congress to reduce the federal budget deficit are commendable. Fiscal responsibility, rather than a "buy now, pay later" mentality, is imperative if we are to restore our economy to complete health. Granting the President line-item veto authority is in accord with a commitment of our national leaders to a sound federal fiscal policy and will reinforce the strides already made by Congress in this direction.



State University College at Cortland

P.O. Box 2000 Cortland, New York 13045

Department of Political Science
(607) 753-4105, 753-4106

April 11, 1984

The Honorable Orrin Hatch
U.S. Senate
125 RSOB
Washington, D.C. 20510

Dear Senator Hatch:

I am enclosing for your information a copy of an article I have recently completed on the item veto. I understand that the Judiciary Committee's Subcommittee on the Constitution is currently holding hearings on S.1921 and other bills that propose to grant item veto powers to the president. As this is an interest of mine, I thought you might be interested in the enclosed.

For your information, I am a political scientist with an interest in the presidency. I am the author of The Presidency and Public Policy, and various articles on the subject.

I am and will be most interested in the progress of this proposal.

Sincerely,

Robert J. Spitzer
Robert J. Spitzer
Department Chair

THE ITEM VETO RECONSIDERED:
DOES THE KING NEED ANOTHER SCEPTER?

Robert J. Spitzer
SUNY Cortland

Prepared for publication in Presidential Studies Quarterly, forthcoming.
Not to be quoted without permission of the author.

ABSTRACT

The purpose of this brief essay is to argue against granting the item veto to the president, based on the assertions that: 1) the item veto, though not considered by the founding fathers as an option for the president, would likely not meet with their favor today given the marked shifts that have occurred between the executive and the legislature in the last 200 years; 2) the president already has a de facto item veto of sorts; 3) the existing veto power is an efficacious tool for presidents; 4) the item veto would not stop pork barreling; and 5) item vetoes at the state level hold no special promise for the national executive.

On January 25, 1984, President Reagan announced his endorsement of a major procedural change in the relations between the executive and the legislature. Reagan chose his State of the Union Address to formally propose that Congress grant him item veto power. In doing so, he expressed a view held by many of his predecessors, and advocated a prerogative currently held by 43 of 50 state governors.

Two articles in this journal have discussed the item veto in a favorable light. One, by Russell M. Ross and Fred Schwengel¹ summarizes the arguments favoring the change, and argues strongly that it be adopted. The second and more recent article, authored by my colleague Judith A. Best, argues cogently and persuasively that the founders would have approved of the item veto for the president. She argues that "the legislature has encroached on the veto power" and "has turned the tables on the executive making the veto work for legislative license instead of against it."² This state of affairs exists today, she argues, primarily because of a legislative practice the founding fathers did not envision--namely, the attachment of riders and non-germane

amendments to legislation. Existing veto powers do not allow presidents to selectively 'weed out' these additions, Best argues, so presidents are sometimes faced with the unhappy choice of either vetoing an entire bill, thus throwing the baby out with the bathwater, or signing the bill, and acceding to expensive pork barrel projects or other riders that are "often either unsound or highly controversial."³ The current veto power, she argues, is thus far less useful to presidents, since these legislative practices have converted "the qualified veto into something closely akin to the absolute veto [a veto that the legislature may not override], a device too rigorous to be used as a security against bad laws."⁴ Given its all or nothing quality, then, the existing veto is one that presidents are more reluctant to use. In this way, Best argues, "the legislature has encroached on the veto power,"⁵ rendering it less than useful.

Professor Best raises a legitimate concern. Congressional porkbarreling is expensive, and presidents are sometimes faced with this kind of 'veto or sign' problem.

The remedy of the item veto, however, poses a far more serious problem for the constitutional balance between the president and the Congress, outweighing its possible benefits. Such a 'reform' would only accelerate the century-long trend toward executive dominance--nay, supremacy--in its dealings with the legislature. The balance of power between the two branches is today so different from what the founding fathers envisioned--that balance now being in the executive's favor--that it is difficult to conceive of the founders approving of anything that might skew the scale even more heavily in the executive's favor.

What the Founding Fathers Feared

The historical record is relatively clear in showing that, in terms of possible abuses of power, the founding fathers principally feared legislative excesses and power aggrandizement.⁶ As Gouverneur Morris observed, "The Legislature will continually seek to aggrandize & perpetuate themselves; and will seize those critical moments produced by war, invasion or convulsion for that purpose."⁷ This quote highlights the historic irony that presidents, not the legislature, have succeeded in seizing "critical moments" to enhance their power position vis à vis the legislature. It is difficult, at best, to believe that the founding fathers would have been sanguine about the presidents' accretion of powers, for we know that they also shared concern

about executive excesses, to the extent that a single executive was feared by some as a possible "foetus of monarchy."⁸ One cannot help but speculate that today's "imperial presidency," even (or especially) as resurrected after Watergate, would be a bit too monarchical for the tastes of the founders. But aside from speculations regarding what the founders might have thought, what of the desirability and/or necessity of the item veto for the modern presidency? Surely, the adoption of such a change must rely on the revelation of a demonstrable need or real gap in presidential power and prerogative. Yet the evidence does not, in my view, reveal any such need on the part of the president. This conclusion is founded on several grounds.

The President Already Has de facto Item Veto Powers

The fact that the current president or his predecessors would favor an item veto comes as no surprise. What is surprising is the lack of recognition that presidents already have a kind of item veto power, and that even if they did possess the legal fact, the power would probably not work in the way its advocates suggest.

Presidents throughout history have succeeded in circumventing parts of statutes by referring to them as unconstitutional, or by treating them as congressional suggestions rather than mandates through selective enforcement, or by impounding funds. In the 19th century, Presidents Jackson, Tyler, Buchanan, Grant and Cleveland, for example, all employed one of these first "workarounds."⁹ Presidents in the 20th century have been no less inclined to rely on these procedures. In 1976, for example, President Ford declared portions of a defense appropriations bill and a veterans' bill a "nullity" at the time he signed them. His rationale in both cases was that the disputed provisions involved what were in his view improper legislative encroachments on executive powers.¹⁰ In 1979, President Carter decided to treat a statutory requirement as a recommendation in response to a congressional mandate that the U.S. establish consular relations at a specified time and place.¹¹

Impoundment has been in use by presidents at least since the time of Jefferson. Despite recent restrictions imposed on impoundment powers by the Budget and Impoundment Control Act of 1974, requiring close supervision and approval by Congress of budgetary rescissions (refusal to spend money) and deferrals (delays in spending money), presidents can still impede, alter and even block the flow of funds to sufficiently objectionable programs.¹² Pres-

ident Ford, for example, requested no fewer than 330 deferrals and 150 rescissions.¹³ Moreover, there can be little doubt that presidents continue to exert the dominant role in most aspects of budgeting, from the setting of budgetary priorities to the implementation of spending decisions.¹⁴

Existing Veto Powers Do the Job

The argument favoring the item veto stresses heavily that the current all-or-nothing veto minimizes its utility. Yet the actual record of the presidential veto demonstrates the opposite--that the veto has become an ever more useful tool for the presidents over time, and that its use, or threat of use, continues to be an effective policy-shaping tool for the president.

In the early part of the 19th century, the presidential veto was rarely used. Our first 16 presidents (through Lincoln) employed a total of only 59 vetoes.¹⁵ Suspicions of the president's use of the veto power during this period were highlighted by the fact that a veto by John Tyler of a tariff measure prompted the first serious attempt in our history to impeach a president. Representative John Minor Botts charged in the impeachment resolution that Tyler committed the high crime and misdemeanor of "'withholding his assent to laws indispensable to the just operation of the government.'" ¹⁶

Since the time of Tyler, the veto power has of course come to be accepted as an integral tool in the president's ample arsenal of devices he may utilize in the legislative realm. Since Lincoln's administration, presidents have made frequent use of the veto power. From 1865 to the end of President Carter's term, the veto has been employed no less than 2332 times (1344 regular vetoes, 988 pocket vetoes).¹⁷ The efficacy of this tool is demonstrated by the relative inability of Congress to successfully override--only 88 times during this period (6.5 percent of regular vetoes).

Presidents have often utilized, or threatened to utilize the veto to achieve their policy ends. Franklin Roosevelt would on occasion ask congressional allies to submit a bill specifically for him to veto, so that he could remind Congress of his willingness to employ the veto as a policy enforcement technique.¹⁸ The Nixon and Ford administrations used the veto threat as an integral part of their legislative strategies. As Stephen J. Wayne reported, "Liaison aides used the threat of a presidential veto to influence the Democratic majority to tailor its legislative proposals so that they would be acceptable to the president."¹⁹ A legislative co-ordinator during the Nixon-Ford terms estimated that the veto threat resulted in legislative alterations favorable to the president in 20 to 40 cases. For example, in 1971, the

House and Senate passed a consumer protection bill. Ford announced that he would veto the bill. As a consequence, the bill was never submitted to a conference committee.²¹ In 1979, Carter announced his intention to veto any bill authorizing tuition tax credits. Efforts to enact tuition credits in Congress subsequently ceased, despite the fact that the Senate had already passed such a provision.²² In 1981, Reagan used a veto threat to deter the Congress from enacting "budget-busting" legislation that might have affected his economic program.²³

The use of the veto or veto threat as a tool for influencing legislation is admittedly limited. Threats diminish in efficacy if employed too often; similarly, a president too quick to use the veto power is liable to make 535 enemies on Capitol Hill. But the veto was not designed as an everyday tool. The founding fathers viewed the use of the veto as above daily legislative-executive interaction. "The two objects of the veto were to defend the executive rights, and 'to prevent popular or factious injustice.'"²⁴

The Item Veto Won't Stop the Pork

Advocates of the item veto urge its adoption so that presidents can restore greater fiscal responsibility by stemming the tide of pork barrel legislation. Congressional porkbarreling is expensive, and is too often founded on political expediency rather than need. But item veto proponents assume that the president does not share an interest in pork barrel, distributive-type legislation. Such an assumption is unwarranted.²⁵ One empirical study of presidential policy-making in Congress covering the 1954-1974 period chronicles a major presidential commitment to "distributive" policy-making, noting in particular a marked rise in distributive policy proposals made by the president to Congress in every presidential election year during the time studied.²⁶ There is no reason to believe that an item veto would stem the pork tide; rather, it would simply bias the legislative process more heavily in favor of the president's pork, and that of his congressional colleagues.

But Most Governors Have Item Vetoes. . .

If state governments mirrored the federal government, state practices might be a better indicator of the consequences of the item veto. One study draws a distinction between federal and state veto use in this way: "At the national level, vetoes based on constitutional grounds and policy differences are the norm. In the states, the veto is used, in addition, because bills duplicate one another, because acts of legislatures are vague and incapable

of enforcement, or because technical flaws have occurred in drafting."²⁷ Moreover, an examination of some cases of state item veto use is less than comforting. Former Wisconsin Governor Patrick Lucey eliminated the word "not" in "not less than 50 percent" in a tourism appropriations bill he item vetoed while in office, transforming a 50 percent floor into a 50 percent ceiling. Lucey also "vetoed" the "2" from a \$25 million highway bond bill, thus reducing the authorization by \$20 million.²⁸ These examples are not offered as necessarily typical of item veto use, but they do suggest that granting an item veto to the president would open the door to both unintended and undesirable consequences that could not be easily foreseen or parried. Comparisons between state and federal practices require a kind of systematic scrutiny that does not now exist for the item veto issue.

Conclusion

The item veto is the panacea for the problem of unwise or extravagant legislation. It is a quick fix for a problem whose resolution lies in political accountability for the consequences of political decisions made mostly by the executive. The resolution does not lie in bestowing on the president another bat for clubbing the Congress. After all, the basic budgetary imbalances of the last few years are attributable principally to marked increases in defense spending, a sweeping tax cut program, and entitlement programs that lock in spending increases. These are all White-House-inspired priorities.

In addition, the existing veto is a tool that presidents can and do use. And even if one disputes its utility, it is but one device in a more than ample arsenal of legislative-directed devices, the combination of which continue to make the president "the Chief Legislator."

FOOTNOTES

¹"An Item Veto for the President?", Presidential Studies Quarterly (Winter, 1982), pp. 66-79. The item veto is also debated in two law journal articles: Richard A. Givens, "The Validity of a Separate Veto of Nongermane Riders to Legislation," 39 Temple Law Quarterly 60 (1965); and Richard A. Piggs, "Separation of Powers: Congressional Riders and the Veto Power," 6 University of Michigan Journal of Law Reform 735 (1973).

²"The Item Veto: Would the Founders Approve?", Presidential Studies Quarterly (Spring, 1984), p. 188.

³Ibid., p. 187.

⁴Ibid.

- ⁵ Ibid., p. 188.
- ⁶ Louis Fisher, President and Congress (N.Y.: Free Press, 1972), pp. 21-22. See also the Appendix. In addition, Charles C. Thach, Jr., The Creation of the Presidency (N.Y.: DaCapo Press, 1969), p. 171.
- ⁷ Max Farrand, The Records of the Federal Convention of 1787, (New Haven, CT: Yale University Press, 1966), Vol. 2, p. 52. See also Vol. 1, p. 107, the comments of Wilson, Hamilton and Madison.
- ⁸ Ibid., Vol. 1, p. 66. See also pp. 106-108.
- ⁹ Louis Fisher, The Politics of Shared Power (Washington, D.C.: Congressional Quarterly Press, 1981), p. 25; The Constitution Between Friends (N.Y.: St. Martin's Press, 1978), pp. 90-91. George C. Edwards III, Presidential Influence in Congress (San Francisco: W.H. Freeman, 1980), p. 91.
- ¹⁰ Fisher, The Constitution Between Friends, p. 93.
- ¹¹ Fisher, The Politics of Shared Power, p. 25.
- ¹² See Edwards, Presidential Influence in Congress, p. 21.
- ¹³ Fisher, The Constitution Between Friends, p. 192.
- ¹⁴ See Louis Fisher, Presidential Spending Power (Princeton, N.J.: Princeton University Press, 1975), passim. As Fisher states, "What is done by legislators at the appropriation stage can be undone by administrators during budget execution." p. 7. See also Lance LeLoup, Budgetary Politics (Brunswick, OH: King's Court Communications, 1980), Ch. 6, esp. 149-150.
- ¹⁵ Presidential Vetoes (Washington, D.C.: U.S. Government Printing Office, 1978), p. ix.
- ¹⁶ Wilfred E. Binkley, President and Congress (N.Y.: Vintage, 1962), pp. 118-119.
- ¹⁷ Presidential Vetoes. Carter data from Weekly Compilation of Presidential Documents.
- ¹⁸ Robert J. Spitzer, The Presidency and Public Policy (University, AL: The University of Alabama Press, 1983), p. 8.
- ¹⁹ The Legislative Presidency (N.Y.: Harper and Row, 1978), p. 159. Herman Finer observed that the veto power enables the president "to dominate his opponents in Congress and to sustain the proposals of his friends." The Presidency (Chicago: University of Chicago Press, 1960), p. 58. Finer cites a number of examples from the Truman and Eisenhower administrations of effective policy manipulation by presidents through use of the veto.
- ²⁰ Wayne, The Legislative Presidency, p. 159.
- ²¹ Fisher, The Politics of Shared Power, p. 24.
- ²² Edwards, Presidential Influence in Congress, p. 24.
- ²³ Raymond Tatalovich and Byron W. Daynes, Presidential Power (Monterey, CA: Brooks/Cole, 1984), p. 153.
- ²⁴ Max Farrand, The Framing of the Constitution of the United States (New Haven, CT: Yale University Press, 1913), p. 15.
- ²⁵ See for example, Fisher, The Constitution Between Friends, p. 94; Mark Petracca, "The National Executive and Private Interests," A Paper Delivered Before the 1983 Annual Meeting of the American Political Science Association, Chicago, Illinois, September 1-4.
- ²⁶ Spitzer, The Presidency and Public Policy, pp. 98-100; also, 41-53, 149-153.

²⁷ William J. Keefe and Morris S. Ogul, The American Legislative Process (Englewood Cliffs, N.J.: Prentice-Hall, 1961), p. 367.

²⁸ Fred R. Harris and Paul L. Hain, America's Legislative Processes (Glenview, IL: Scott, Foresman and Co., p. 410.

BILL GRADISON
2ND DISTRICT, OHIO

MARGARET TOTTER
ADMINISTRATIVE ASSISTANT

Congress of the United States
House of Representatives
Washington, D.C. 20515

2511 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
TELEPHONE: (202) 225-3164

FEDERAL OFFICE BUILDING
530 MAIN STREET
CINCINNATI, OHIO 45202
TELEPHONE: (513) 664-2456

180 EAST MAIN STREET
BATAVIA, OHIO 45103
TELEPHONE: (513) 732-1786

January 30, 1984

Dear Colleague:

Giving the President a "line-item" veto would be a mistake. While it may work at the State level, it has serious flaws as national policy:

- (1) Increasing the power of the Executive would fundamentally shift the balance of power that has stood the test of time for 200 years. Those of us who consider ourselves "conservatives" should be the first to oppose weakening the power of the legislative branch.
- (2) Entitlements, now over half of federal spending and the principal sources of the spending explosion, would not be subject to line-item vetoes. Pressures would increase to convert spending subject to (line-item) appropriations into entitlements, lessening control over spending.
- (3) Defense appropriations would be especially vulnerable to line-item vetoes because they constitute more than half (57%) of the portion of the budget that would be subject to line-item vetoes in a given year.
- (4) Knowing that the President had "line-item" authority might encourage Congress to increase appropriations, passing the buck to the President to take the political heat.

Sincerely,

Bill

NEWSPAPER AND MAGAZINE ARTICLES

[From the Wall Street Journal, June 9, 1982]

GET-SERIOUS TIME

We know that budget debates are great fun, otherwise why would the House be spending so much time seeking a "compromise" on a First Budget Resolution it knows it will ignore next fall. Since the passage of the Budget Act of 1974, no first resolution has been worth the paper it was printed on—why should this one be different?

The endless debate over meaningless numbers threatens to sink the Congress to a single-digit rating in the public confidence polls. As believers in parliamentary democracy, we would not like to see that happen. So maybe it is time for the Congress to take a serious look at its institutional inability to manage money. Maybe it's even time to do something about it.

We have watched this circus long enough to conclude that the only way to restore order is to clip Congress' wings. It has itself become a huge bureaucracy, with a budget that has nearly quadrupled since 1970. Its army of staff aides, working closely with self-interested lobbyists and federal bureaucrats, spend millions of man-hours each year figuring out ways to spend tax money or obligate the government to future spending on behalf of this group or that.

Quite clearly this vast enterprise, which employs nearly 20,000 people in support of 535 legislators and maintains itself with a budget of over two thirds of a billion dollars, is not institutionally capable of self-restraint. It has no responsible power center. It sought to construct a self-disciplining framework with the 1974 budget act (and at the same time, by the way, further weaken the President's budgetary control). But the present spectacle in the House should remove any lingering doubt that the 1974 act is a colossal failure.

Congress's resolve to behave itself was expressed in the budget act's stipulation that joint resolutions should apply a ceiling to total appropriations for a fiscal year. But the process of gearing appropriations to the ceilings broke down years ago. The only important part of the budget act that has held up has been the section that limits the President's power to mend congressional failures by applying his own restraints.

Before 1974, Presidents had asserted the right, through the Anti-Deficiency Act of 1950, to impound funds—that is, withhold spending for "managerial" reasons after it had been appropriated. President Nixon's attempt to assert this power led the Democratic Congress to rescind it in the budget act.

Inserted in place of impoundment were more limited rights to defer spending temporarily in the course of a fiscal year (unless overruled by Congress) or rescind spending if the President can obtain congressional approval within 45 days. President Reagan's attempts to use even these puny powers have met with loud outcries. Rep. Ottinger of New York, among others, would have had us believe that withholding \$22 million for a federal boondoggle called the Solar Bank was a vicious attack on the poor, lame and halt.

What's to be done then? There is, of course, a movement afoot with strong grass-roots backing—and recently support from the President himself—in favor of a constitutional amendment that would cap federal spending and require a balanced budget. While we sympathize with the spending cap goal, we have been skeptical of this effort, in part because we think some more immediate action is needed if the economy is to regain its confidence in government.

A quicker approach would be to repeal the useless and embarrassing budget act and restore presidential impoundment authority, which was in fact upheld in some of Nixon's court fights. Another solution would be to invert the rescission power so that Congress would have to overrule a rescission, preferably with a two-thirds vote, within a certain time in order to restore spending.

Either of these would be roughly equivalent to giving the President the kind of line item veto power that governors of several states have. But it would obviate, probably, the constitutional amendment that a line veto would likely require.

The obvious problem with any of this is that it asks Congress to curtail its own power. A bloc of young Congressmen, led by Georgia's Newt Gingrich, want exactly that. Most of them favor the balanced budget amendment approach. But there is no groundswell in Congress. Perhaps a wholesale purging of incumbents next fall will be needed if the voters are ever to rid themselves of the kind of disquieting spectacle we have just been witnessing on the floor of the House.

[From the Wall Street Journal, Sept. 9, 1983]

LINE-ITEM LEASH ON RUNAWAY SPENDING

(By Henry Hazlitt¹)

We have had 45 federal deficits in the past 53 years, and uninterrupted deficits in the past 15 years.

There are two ways of preventing or ending deficits. One is to cut spending, and the other to increase taxes. We can, of course, try a little of both.

This is the approach contemplated in the balanced-budget constitutional amendment before Congress. Even many of those people who have reservations favor this amendment on the ground that something is better than nothing. But the proposal raises serious questions.

Perhaps the main objection to the balanced-budget amendment is that it puts at least as much emphasis on obliging Congress to raise taxes to achieve a balance as it does on cutting expenditures. This mistakes the nature of the problem. The real evil in the budgets of the past half century has been growing, reckless outlays, and not the deficits per se.

If federal expenditures are at a reasonable level, there isn't any great problem in finding the taxes to pay for them. But the higher the spending, the more formidable the taxing problem becomes. Taxes always undermine incentives, sales, employment and production. The higher the taxes, the greater the harm they do to the whole economy. Beyond a certain point, raising tax rates brings in lower revenues.

LIPPMANN'S PROPOSED REMEDY

All this may seem too obvious to mention, but it is persistently overlooked. This first struck me forcefully when I encountered a New York Herald-Tribune column of March 5, 1959, in which Walter Lippmann complained: "Both parties are pretending that they are struggling to balance the budget. In fact neither the Administration nor the Congress shows any sign of being willing to vote the taxes which are absolutely essential if the budget is to be balanced."

Mr. Lippmann's proposed remedy followed from his initial assumption that all the spending already going on, plus a great deal more, was absolutely necessary.

The fallacy of trying to balance the budget mainly with increased taxes can most easily be recognized if we look at the budget record since, say, this Lippmann proposal.

In fiscal 1959 the deficit was \$12.9 billion because, though budget receipts were \$79.2 billion, outlays were \$92.1 billion. In 1960 taxes were higher, and revenues jumped to \$92.4 billion, enough to have balanced the 1959 budget. They did achieve a small surplus—for one year. But in 1961 spending was raised to \$97.8 billion, and deficits came back.

If we now look at 1983, the estimate of budget receipts is \$598.3 billion, nearly eight times such receipts in 1959. But to no avail. Spending has increased far more, leaving us with a prospective deficit of \$210 billion, the highest ever.

If we carry the record back to 1931, when our string of deficits began, we find we have increased our revenues 193 times. Even allowing for the inflation that the deficits themselves have largely brought about, Congress has increased our tax burden 30 times in real terms—without stopping the deficits.

So let us finally drop the delusion that we can pay for any level of spending by raising taxes. That myth has been leading us only toward increased unemployment and economic stagnation. And let us finally put aside, also, after the past half century's record, the idle hope that Congress can somehow be induced to return to responsibility or to discipline itself. What we desperately need is an outside curb on the current unrestrained power of Congress to spend.

How has this license come about? Doesn't the president have the same power to veto appropriation bills as he has to veto other measures? Theoretically he does. But Congress has perfected the device of throwing in pork-barrel, log-rolling and other vote-buying appropriations with those that the president needs to carry on the government. In addition, Congress has perfected the practice of passing its appropriation bills at the very end of a session, so that if the president vetoed a typical omnibus spending bill in order to get rid of an objectionable item, he would be left with-

¹ Mr. Hazlitt, the author of many books on economics, has written for the New York Times, Newsweek and the Journal.

out any money at all. So far as appropriations bills are concerned. Congress has usurped total power. The presidential veto has been reduced to nullity.

The cure for this would be a constitutional amendment granting the president power to reduce or veto individual items in appropriation bills.

This isn't a new proposal; it has a long history. There isn't any evidence, it is true, that the question was even discussed in the Constitutional Convention of 1787. But by the time of the Civil War, when the Confederate state delegates met to frame their own constitution, the problem had been recognized. And they specifically provided for the presidential item veto. In 1867, President Andrew Johnson complained that Congress had thrown objectionable provisions into a section of an appropriations act that "virtually deprives the President of his constitutional functions as Commander in Chief of the Army." He felt forced, nevertheless, to give his approval to the measure, "but to accompany it with my protest."

Then, President Ulysses S. Grant asked Congress in 1873 to amend the Constitution "to authorize the Executive to approve of so much of any measure passing the two houses of Congress as his judgment may dictate, without approving the whole, the disapproved portion or portions to be subject to the same rules as now." Presidents Rutherford B. Hayes, in 1879, and Chester A. Arthur, in 1882, repeated this recommendation, though confining it to appropriation measures.

Franklin D. Roosevelt was the next president to ask for the item veto, followed by Dwight D. Eisenhower. Harry S. Truman in his "Memoirs" wrote: "One important lack in the presidential veto power. I believe, is authority to veto individual items in appropriation bills."

Despite this long history, Congress has done precisely nothing. The apparently insoluble problem that confronts us is how to get congressmen voluntarily to give up or share a power that they have managed to usurp.

If we can't get two-thirds of Congress voluntarily to submit to the states an amendment giving the president the item veto, how can we get around this obstacle?

There is a glimmer of hope. The item veto is so essential to fiscal discipline that in 42 of our 50 states the governor already has this power. In at least some cases, he must have got it through voluntary action by the legislature. (This certainly has been helped by the fact that the states can't print money to cover their overruns.)

If Congress can't be persuaded to take the initiative in submitting a constitutional amendment allowing a presidential item veto, there are two alternatives. One is for two-thirds or more of the state legislatures to ask Congress to call a constitutional convention for the single purpose of drafting and submitting an item-veto amendment. Congress would be obliged to comply. The delegates to such a convention would need to meet only a day or two to carry out their assignment.

ADVANTAGE AND DISADVANTAGE

Another course would be to try to persuade Congress to permit a presidential item veto by simple legislation. This alternative actually was suggested by Mr. Roosevelt in his annual budget message of Jan. 3, 1939: "A respectable difference of opinion exists as to whether a similar item veto power could be given to the President by legislation or whether a constitutional amendment would be necessary. I strongly recommend that the present Congress adopt whichever course it may deem to be the correct one."

The advantage of granting the item veto by legislation would be that it would take effect immediately. The disadvantage is that the power could be taken back more easily by Congress or that Congress in the first place might be more reluctant to grant an item veto to the president then in office.

One question certain to be raised is whether a big-spending president actually would make much use of an item veto. One answer is that in that case, granting the power wouldn't do any harm. But it would at least remove the alibi that presidents have as long as they lack this power. With it, they could be held strictly responsible, as they in fairness can't be now, for the spending result. As matters stand, the president is directed to present a budget, and in the eyes of the public is held responsible for it, though he has neither the power to appropriate nor any real power to cut outlays.

Presidential power to reduce or veto individual items in appropriation bills certainly would make a real difference. If we can get back to prudent and responsible spending, the task of raising the matching revenues won't seem insuperable any longer.

[From the Wall Street Journal, Sept. 14, 1983]

BUDGET SOLUTION

The days and nights of the living dead have returned: The Congress of the United States is back in Washington, where it must again confront the budget nightmare. Congress' wailing and howling over the dread budget deficit causes quite enough discomfort across the land, so we're reluctant to arouse them further. Alas, we present some simple truths about the deficit—and a proposal to free Congress from the curse of the budget process.

Recent history has taught us a few things about what a budget deficit does and does not do. Deficits do not prevent a recovery. We currently have a \$200 billion deficit. We currently have a recovery.

It's widely argued that if the government has to finance a deficit of \$100 billion to \$300 billion, interest rates will skyrocket again, perhaps to 17%, crushing the recovery (and the Reagan presidency). We have come to doubt the validity of this argument, which depends in large part on the assumption that government borrowing—and its impact—is limited to the securities market, which in 1982 was thought to have an available savings flow of about \$350 billion.

It seems more plausible, as John Rutledge argued on this page last month ("The 'Structural-Deficit' Myth," Aug. 4), that government borrowing to finance a deficit should be viewed in the larger context of the economy's total asset holdings, currently about \$20 trillion. Placed against \$20 trillion, a large government borrowing may cause some rise in interest rates, but nothing as large or destructive as the Armageddon generally predicted.

We've been pooh-poohing these concerns (much to the discomfort of many traditional allies) and making the point that a lot of the deficit talk is merely an excuse to get more revenues to increase spending. But we've also been saying privately that two years from now—when recovery came despite deficits—we will be the only people in the land worried about deficits. For the plain and undeniable truth is—and here we rejoin the ranks of our worried allies—deficits do crowd our resources.

But let's get something straight about this. As Norman Ture makes plain in a nearby article today, deficits crowd out resources only to the extent that they serve their imperial master-government spending. We can raise taxes to close the deficit; we can borrow from the private sector to close the deficit. Either way, the money raised becomes government spending. Government spending is the first cause of crowding usable resources out of the private sector.

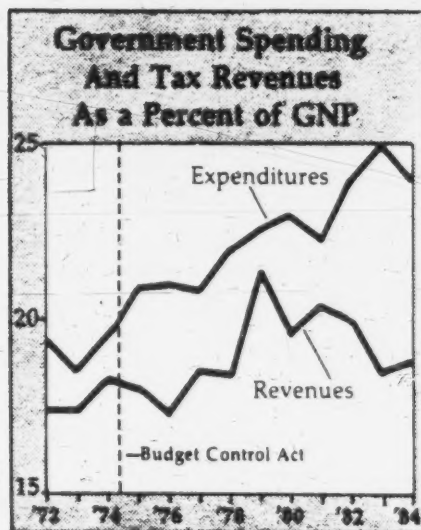
The choice is as clear as it can be: If we want America to have primarily a public economy, we should quit whinning about the deficit and let congressional policies proceed toward that goal. If instead we want primarily a private economy, we simply have to cut spending.

And that means we've got a very big problem: The best political minds in Washington say that all the king's horses and all the king's men will never be able to cut government spending again. This is the implicit assumption behind much of the deficit talk and the counterproductive solutions in the air. We're not so ready, however, to throw in the towel on prudent economic management. What's really happened is that the terms of the political game in Washington have changed in a way that has eroded the traditional restraints on spending imposed by Congress' internal discipline and the external pressure applied by the Executive.

The erosion began with the House committee reforms of the 1970s, which undermined the authority of the House leadership. Next, Congress perverted the principle of entitlements.

Providing basic support for citizens who fell into deep poverty was properly regarded in the 1960s as an appropriate commitment by a successful nation, and Congress, with clear public support, made the commitment. But it erred in not foreseeing (or in willfully refusing to see) that the payment formulas—primarily indexing payments to inflation—would create a claim on the nation's wealth large enough to undermine the health of the larger economy.

The last brick in the dam gave way with passage of the Congressional Budget and Impoundment Control Act of 1974. This mistake had the unintended effect of opening the spending spigot without ever finding the proper tools to shut it off (see the accompanying graph).



Forget the phrase, "budget control." No one takes that seriously anymore. The key words in the act are "impoundment control." In the early 1970s, Congress became petulant over Richard Nixon's attempts to reduce spending by using the president's power to withhold, or impound, funds appropriated by Congress. By effectively eliminating the president's impoundment powers in the 1974 act, Congress grievously damaged the balance of power. The president can still veto appropriations bills, but the bills have become so huge and inclusive that the big veto is no longer managerially or politically useful.

The fact is, this issue has gone quite beyond the question of conservative vs. liberal social philosophies. Congress can't hold down the upward growth in spending, and the president has no effective counterweight to pose against Congress. In short, the ship of state, in its current upward spending stream, is on automatic pilot, with the government laying claim to an ever larger share of whatever the economy produces.

The solution to this problem requires two things: Reimposing discipline on the politics of spending and restoring the balance of power between Congress and the presidency. And as is often suggested, the solution requires two other things: the support of the House speaker and the president. Well, we know the speaker's position: The economy be damned; this conservative president must be jettisoned from the Oval Office no matter what the costs. Resolution of the budget crisis clearly lies with the president, and we know of one proven mechanism for getting the job done. Ronald Reagan should do the following:

He should send a constitutional amendment up to Congress, exhorting it to give the president a line-item veto over the budget. Ed Meese has been floating the item-veto idea for some time, citing in support Mr. Reagan's experience with it in California. The governor of every major state in the Union has line-item veto power, which permits the Executive to veto individual items in the legislature's budget. Nearly every president since Ulysses S. Grant—Democrat and Republican—has requested it. (Yes, indeed, that includes FDR.)

Mr. Reagan should make the line-item veto the centerpiece of his re-election campaign, and he shouldn't flinch from claiming it as the Republican answer to the deficit issue. There is no way Mr. Reagan can avoid having the Democrats fling the deficit in his face, but there's no way the Democrats can hide the intellectual exhaustion of their own ideas. Moreover, it's likely that the prospect of a line-item veto would unify the supply-side and conventional wings of the Republican party.

The usual argument against the line-item veto—that it would unfairly expand the president's power—is clearly fatuous. Congress in 1974 arrogated to itself responsibility for spending; it has clearly failed. Politics in America most effectively performs its proper role—arbitrating among the competing interests of a huge population of free and informed people—when power is real but rarely used. It's most likely that once a president held the power to veto individual spending items, Congress would sort out for itself what is justifiable spending and what isn't just as it did before the "budget control act." And if, as now, Congress declined to exercise prudence in managing the people's tax payments, that national constituency that

elects a president would surely expect him to use the item veto to restore prudence, regardless of the highly publicized screams of Congress' many constituencies.

That is how the balance of power was intended to work. When it is damaged, as it is now, the American system suffers. The presidential power created by the line-item veto will restore the balance. And by forcing legitimate political horse-trading to take place again on Capitol Hill, it would allow Congress to regain its self-respect. Most important, it would show that Washington is truly serious about solving the deficit problem.

[From the Wall Street Journal, Sept. 22, 1983]

TAKE YOUR PICK

What's the difference between the U.S. Congress and New Jersey?

No, no, this isn't another New Jersey joke. New Jersey's fine. This is a Congress joke. It's about Congress and the budget, which is beginning to look about as whacky as something out of "The Dukes of Hazzard."

With passels of congressmen fuming and sputtering like ol' Boss Hogg himself, Ronald Reagan has presided over an economy in which taxation and inflation were brought under control. As a result, the good old boys (and girls) outside Washington who actually do productive work floorboarded the American economy forward with the sort of joyous enthusiasm even Bo and Luke Duke would envy. But even the U.S. president himself can't control the shrewd pols that now populate Congress. First thing Congress did on returning last week was pump up this year's budget \$1.6 billion for 10 favorite social programs, then announce plans to pump taxes up \$12 billion to "help" with the \$200 billion deficit.

And New Jersey? Earlier this summer, New Jersey's legislature brought in a budget just under the figure proposed by the governor. And one of the main reasons this happened is that the Democratic and Republican politicians on the appropriations committee rearranged their spending priorities in a way that would avoid triggering the governor's line-item veto, the very thing we proposed last week that Ronald Reagan make the centerpiece of his reelection campaign.

To repeat: The president should send a constitutional amendment to Congress, asking it to give the president the power to veto individual items in the U.S. budget. And he should barnstorm this perfectly sensible idea straight across the country.

What's the difference between New Jersey and the U.S. Congress? New Jersey's budget process works, and so does the budget process in a lot of other states where the governor has line-item veto power.

"The line-item veto is an extremely important executive tool," we were told by Gerald Miller, head of the National Association of State Budget Officers. "Illinois is a good example, and California, New York. Ohio has it, Pennsylvania, Florida, all your big states. It gets to the fundamental point of fiscal discipline in that the chief executive is ultimately responsible." Precisely.

Two years ago, Illinois's governor said he'd put off a line-item veto of funds for a mental-health center if the legislature found equal saving somewhere else in the budget. "The assembly is elected from all over the state to come together and reach some common decisions," he said.

That remark conveys the essence of the current dilemma in Washington. Congress properly represents the diverse interests of 435 districts and various coalitions. The president (assuming we still respect the way people vote in presidential elections) represent a national constituency. It makes simple common sense that once politics has had its proper run at the budget, responsibility for the outcome should fall on the chief executive, who speaks for this national constituency. And the experience in the states shows that the only way this works is if the chief executive holds the line-item veto.

California this summer went through what may be the biggest donnybrook in the history of the line-item veto. Republican George Deukmejian ran for governor last year on a promise not to raise the state's taxes. He was elected. The state's 1983 budget appeared to be headed for a huge deficit. The Democratic-controlled legislature called for more taxes, against repeated proof that California's voters don't want more taxes. Mr. Deukmejian promised a whopping \$1 billion of item vetos, and he delivered on that promise July 21.

An attempt in Louisiana this year to weaken the governor's line-item veto failed. "Take that away and you can't run this government," the appropriations committee's chairman said of the item-veto process.

We're not going to pretend the states are always the model of good government. But let's face the facts: Everyone in this game at the state level understands that spending to mollify special constituencies exists but is disciplined by the governor's line-item veto power.

[From the Wall Street Journal, Sept. 22, 1983]

Letters to the Editor

WHAT IF THE PRESIDENT COULD VETO PARTS OF A BILL?

The line-item veto has some appealing features, as you suggest in your editorial "Budget Solution" (Sept 14). But it would not be a panacea for our federal fiscal problems. This chief executive tool could jeopardize the defense of our nation, has no chance of receiving Congressional approval, and is vastly inferior to the fiscal discipline embodied in the Tax Limitation Balanced Budget Amendment pending before Congress. Consider:

While the governors of about four-fifths of the states possess a line-item veto power, fiscal discipline derives mainly from the states' balanced budget requirements. Most chief executives are unwilling to run the political risk of seriously cutting the budget as proposed by the legislature. A little whitling is all one may expect.

In the hands of a President unpersuaded of the Soviet threat, the line-item veto could be the nation's nemesis. Vetoes of selected arms projects, representing only a modest dollar amount, could devastate the development and production of that balance of weapons essential to strategic superiority—and national survival. Governors, on the other hand, no matter how irresponsible, cannot exercise the line-item veto in a way that places the very existence of their states in jeopardy.

Tilting at windmills might characterize the effort to persuade Congress to approve a constitutional amendment giving the President a line-item veto. We only have to check history. When President Nixon flexed his impoundment authority (a close cousin of the line-item vote), Congress responded with the Congressional Budget and Impoundment Control Act of 1974, which severely curtailed the President's discretion in this area. The institutional bias of Congress against sharing power over the design of the budget would preclude any chance for a constitutional line-item veto.

The amount of money the federal government actually spends during the year is a problem. The various budget tools—including a line-item veto, I fear—produce a budget target which may have no relationship to reality. There is one amendment which gets at actual outlays. The Tax Limitation-Balanced Budget Amendment. It imposes a duty, jointly on the Congress and the President, to assure that actual outlays during the fiscal year do not exceed the tax-spending limit for the year.

Those seeking federal fiscal responsibility need not cast about for fringe solutions. The Amendment limiting the growth rate of taxes and spending and requiring a balanced budget has proven its political viability by achieving a 69-31 vote in the U.S. Senate last year. Thirty-two states have passed resolutions calling on Congress to pass the Amendment. Only two more states are needed to force the House leadership to act or be faced with a limited constitutional convention.

Despite the President's resounding endorsement of the Amendment in 1982, and his long-standing commitment to the constitutional limitation rationale, there may be some in the Administration who do not want to deal with the issue in 1984. Their discomfort at trying to square the President's badly out-of-balance budget with his support of the amendment is understandable. But there is an answer, a great political and substantive opportunity to reconcile the President's positions. The administration should lead the charge for the Hatch-Gramm modified spending freeze budget (introduced earlier this year), which will lead to a balanced budget by 1988 and calls for approval and implementation of the Tax Limitation-Balanced Budget Amendment by 1989. The line-item veto supporters will get more of what they want from the Amendment

LEWIS K. UHLER,

President, National Tax-Limitation Committee.

LOOMIS, CALIF.

Henry Hazlitt's recommendation (editorial page, Sept. 9) of the adoption of a constitutional amendment giving the President "line item" veto power as to bills of appropriation is timely and necessary. The experience of Illinois since this was includ-

ed in its Constitution of 1970 is a practical laboratory demonstration of the value and importance of this procedure.

Whereas in the 1968-69 the state faced imminent bankruptcy because of excessive appropriations, insufficient tax revenues, and lack of borrowing power, in 1971 the predictions of the news media that there was a prospective deficit which would create either a state financial crisis or an increase to the state income tax was confounded by Governor Ogilvie's use of the item and reduction vetoes to cut \$156 million and thereby bring expenditures into balance with revenues, and with no increased income tax.

Since state legislatures and congressmen are forced by their local constituencies to vote for increased spending, and since governors and the president are responsive to the entire electorate and hence are in a position where they can represent to general welfare in allocating our resources, this amendment may well be essential if democratic government is to survive its tendency to spend beyond the limits of bankruptcy for all remotely desirable objective.

ROBERT W. BERGSTROM.

CHICAGO.

Unlike most of the item-veto resolutions that have been offered in the past, my proposal seeks to try to maintain the balance of power between the legislative and executive branches by allowing Congress to override an item veto by majority vote rather than a two-third vote.

While I do not contend that adoption of this amendment would solve by itself the severe budget problems facing us, I do believe its adoption would help to eliminate the spending bias that makes it so difficult to bring the budget back into balance. Congress cannot balance the budget by itself. If Congress is to act decisively, strong executive leadership is required. In order to lead effectively, though, the President must have the necessary tools, including, I believe, an item veto power. An item veto would allow the President to focus the budget debate on those items truly in controversy, helping to reduce the log-rolling that now makes responsible budgeting so difficult.

ALAN J. DIXON (D., Ill.)
U.S. Senate.

WASHINGTON.

[From the Wall Street Journal, Oct. 7, 1983]

STOP THE MERRY-GO-ROUND

There now appears to be a very good chance that President Reagan will take the one step that can put Congress out of the misery it brought down on itself by creating the "budget process." He may ask Congress next year to create the power of line-item veto for the president.

The line item was put squarely on the public-policy table this week by Treasury Secretary Donald Regan. "I'll be pushing for it," Mr. Regan said. Moreover, the Journal's Kenneth H. Bacon reported that the president may seek the line-item veto in his budget proposal to Congress next year, raising the possibility that Mr. Reagan will make the item veto a campaign theme in 1984. If so, we suggest the president set this intention in concrete and have it dead-bolted to his desk so no one will doubt his resolve.

The growth in federal spending is the single most intractable problem this country has on its hands right now. And the line-item veto is the one—the only—tried and proven management tool ever created in this country to control public spending.

Spending control is traditionally thought to be the pet project of Republican politics. The corollary, we take it, would be that undermining control of public spending is the pet project of Democratic politics. However, this sort of crude stereotyping is accurate only if limited to the behavior of Congress since the Hansen-Bolling committee reforms of the early 1970s and the Budget Control Act of 1974. Unintentionally, these reforms broke Congress's back, and the members know it.

But the line-item veto, which lets a governor—or president—reject individual items in an appropriation bill, has a history of support among Democrats serving in the executive branch. Both FDR and Harry Truman favored it. And back in 1981, Lloyd Cutler, former counsel to President Carter, spoke in favor of the line-item veto at a conference on the ills of the presidency. Mr. Cutler later told the Christian

Science Monitor, "We are the only country where the legislature can vote a larger budget than the executive proposes."

This week, for instance, the Senate voted a single, mind-boggling \$91 billion appropriation bill for several departments' domestic spending. The president is supposed to accept it or veto it in toto. Surely the item veto is a more prudent way to deal with sums of this size.

The line-item veto does in fact have support in the current Congress, and it is bipartisan. In the House, Republican Jack Kemp has just introduced a constitutional amendment to give the president the line-item veto. The item veto's leading proponent in the Senate is Alan Dixon, a Democrat from Illinois, which uses the line-item veto, as do 42 other states. Mr. Dixon served in the Illinois State Legislature from 1951-71 and as state treasurer from 1971-77. It's a well-known fact that the "budget process" of the last two sessions has been hell on earth for members of Congress, and someone with Sen. Dixon's experience with the item veto must surely wonder why Congress persists in grinding its gears this way. Sen. Dixon hopes to find out several weeks from now, when he holds hearings on his line-item-veto proposal.

It's becoming evident that the closer members of Congress look at the item veto in the context of their current difficulties, the better it looks. On Wednesday Georgia's Sen. Mack Mattingly introduced his own bill and a call for a constitutional amendment. The Dow Jones News Service also reported this week that House Budget Committee Chairman Jim Jones said that although he hadn't formed an opinion on the item veto, "I have asked for a whole lot of information on it." Chairman Jones's interest indicates the idea may get the serious discussion it deserves.

We're pretty sure what the pro forma objections will be to the line-item veto. It would, as the irrepressible Rep. Jim Wright has said, give the president "dictatorial powers." It's an article of faith among legislators that giving the executive the item veto comes at their expense. But if opponents in Congress of the item veto fear that it will diminish their constitutionally established mandate, they should be challenged to state whether they now regard the primary and proper exercise of that mandate to be finding ways to spend annually larger shares of the gross national product. That is what Congress does now. Can the members of Congress give any reason why the people should not regard them as mainly an automated spending machine?

Before the gentlemen and gentleladies of Congress pull themselves up to their full aristocratic height to inveigh against the imperial presidency, we'd like to suggest that they sit down and think a little about what the Congress of the United States has become.

Nearly every aspect of American life has become politicized and now has its own squadrons of lawyers and flacks in Washington. The city—and especially the halls of Congress—has become a permanent circus of lobbyists and public-interest groups cartwheeling through Congress for some of Uncle Sam's cotton candy. Odd, isn't it, how none of them ever seems satisfied? In short, the balance of power has rolled free of both the elected chief executive and the legislature, where it properly belongs, and into the unelected hands of the public-policy specialists.

Congress badly needs some way to get off this merry go-round. It badly needs to find its way back to a life of serious, constructive politics. A strong campaign by Mr. Reagan on behalf of the line-item veto would be the right step in that direction.

[From the National Journal, Nov. 26, 1983]

PURSE STRINGS POLITICS

(By Richard E. Cohen, Congressional Focus)

If the federal deficit becomes a hot political issue in 1984—and that seems a safe bet—then the odds are equally good that the line-item veto will receive prominent discussion, both in Congress and on the campaign trail. Already it has stirred widespread support, though not much apparent awareness of the major change the device would force in the balance between Congress and the President.

The idea probably is not on the verge of enactment, but for lawmakers who are frustrated about their inability to make a serious dent in the federal deficit, it could well emerge as the latest temptation to deal with the problem by elevating form over substance. If so, the line-item veto concept probably would replace the balanced budget constitutional amendment, a gimmick passed by the Senate in 1982 and still actively pushed by President Reagan and many Members of both parties even

though the prospect of annual deficits exceeding \$200 billion has diminished its luster and credibility.

Details of the line-item veto plans introduced in Congress vary, but the basic concept gives the President authority to refuse to spend money appropriated by Congress for particular programs even though he has already signed the over-all bill mandating the spending. Under some of the recently filed proposals, most of them offered in the form of a constitutional amendment, the House and Senate would have the power to override the presidential veto and force the spending of the money.

The concept is hardly a new one. In 1938, the House passed an appropriations bill that included a provision giving the President authority to reduce any spending, without congressional review, but the proposal went no farther.

Supporters and opponents disagree over what impact the proposal would have on Congress or the deficit. Although critics contend that the veto power would weaken Congress's hold on the federal purse strings and produce a radical change in the separation of powers, proponents point out that nearly all state constitutions provide comparable authority. A compilation by the Council of State Governments lists 42 governors with some form of line-item veto power. But the analogy may not be entirely appropriate; state constitutions generally do not permit deficits, and many legislatures are in session for only a few weeks annually, leaving the governor broad power to manage the budget.

Reagan has endorsed the idea, but most vigorous advocate within the Administration has been Treasury Secretary Donald T. Regan, who has said, "If Congress is unable or unwilling to cut spending, [it] should give the President expanded authority to do the job." Regan reportedly has advocated that the President embrace the proposal in next January's State of the Union message.

Congressional sponsors span the political spectrum from Democrats such as Sen. Alan J. Dixon of Illinois and Rep. Charles E. Bennett of Florida to Republicans such as Sen. Mack Mattingly of Georgia and Rep. Jack F. Kemp of New York. Dixon argues that it is not a partisan or ideological issue. Because of the difficulty Members have in providing leadership to balance the budget, "the solution is to bring the President into the budget process to a much greater degree," he told the Senate. "Only the President can provide the leadership necessary to solve our overriding fiscal problems."

The nearest that the line-item veto came to a test was a truncated version offered on Nov. 16 by Sens. William L. Armstrong, R-Colo., and Russell B. Long, D-La., influential members of the Finance Committee. The proposal, which was tabled, 49-46, would have required the President to cut expenditures if the deficit exceeded its expected ceiling during a given month. The President could not cut any program, project or activity by more than 20 per cent in year and could not touch existing entitlement benefits.

"The proposal merely suggests that if deficits are running higher than projected, the President would have the authority to economize, to call upon his department heads and agency heads to say: 'Look, we are running over. We are spending more than we have got, so you are going to have to find a way to stay within our limits,'" Long said.

Armstrong voiced the mounting unhappiness of many conservatives with the impoundment control procedures of the 1974 Congressional Budget Act. His proposal, he said, attempts to undo that law's "mistake when we tied the hands of the President in limiting his ability to manage the nation's business." Under that law, a President can rescind appropriated funds only if he requests and receives the approval of the House and Senate. Previously, the legality of such a unilateral presidential action was uncertain, although courts had ruled unconstitutional attempts by President Nixon to impound spending.

Because the sponsors linked their proposal to the debt ceiling, it had a jerry-built quality that would have made it difficult to enforce. Armstrong, who saw the amendment as part of his long-term struggle to overhaul the budget process, plans a further push of his more direct proposal that would permit any rescission proposed by the President to become effective unless vetoed by the House and Senate.

The passage of such a law would surely invite a court challenge from critics who contend a statutory line-item veto would make Congress subservient to the President. It might also run contrary to last June's Supreme Court decision holding the legislative veto unconstitutional because it deviated from the prescribed law-making procedure of House and Senate approval followed by presidential signature or a veto override.

A constitutional amendment, which would face a rigorous test of winning approval of two-thirds of the House and Senate and three-fourths of the states, probably

would moot the legal issue. But, as Mark O. Hatfield, R-Ore., noted in the recent Senate debate, it raises the more critical issue of whether the proposal is "an abdication of our responsibilities" to set federal policies.

The line-item veto may have a short political life, but it may last long enough to inject the arcane procedures of federal budget making into the thick of next year's campaign.

[From the Wall Street Journal, Dec. 16, 1983]

THE BUDGET PLAY

We can think of at least 535 Americans who probably are going to have a hard time saying Happy New Year in a few weeks. The end of the holidays means the members of Congress must trudge back to Washington, pick up their heavy hammers and again have at that great American rock pile—the U.S. budget.

The thought of replaying yet another budget battle tempts one to call for a news blackout lest the nation suffer yet another staging of this annual tragedy, tormented by the walls of Bob Dole and Tip O'Neill. Aside from the sheer tedium of it all, President Reagan risks serious dangers if, over the coming months, he allows Congress to define the rules of the budget game as it's now played in Washington: The president proposes a budget. Congress counters with its own budget resolution and the two sides spend the next 40 to 50 weeks slugging it out in a standstill at mid-field.

What's going to make the budget in this Congress different is that both sides fully understand that the session preceding a presidential election is largely an exercise in artifice, a kind of out-of-town tryout in which the players float all sorts of political strategies in advance of the serious campaign to win the White House and Congress. Unhappily, we've all got to go to work every day and play out our roles in this charade, with a dutiful press reporting the day-to-day details of Washington's major economic story—a tormented Congress locked in struggle over the budget with an uncompromising president; speculation over the terms of extracting the promise of a "revenue plug" from the administration; periodic appeals to "the two Irishmen"—O'Neill and Reagan—to sit down over a whiskey and cut the deal that will roll this horror over into 1985.

The question is, does Ronald Reagan want to play his assigned role in this bomb?

There is a sense in which one is required to take seriously the next session of Congress. Much evidence to the contrary, the federal government still has a real budget whose spending levels must be proposed by the president and acted on by Congress. The administration has been debating with itself over whether it is sensible to reintroduce budget cuts Congress rejected last year, and admittedly one element in this decision is the task of responsibly operating a large national government. We do not need a year of total stalemate.

Yet it is also true that a good policy argument can be made on behalf of reintroducing the cuts if the administration is serious about the economic necessity of scaling back the federal share of the nation's income. Mr. Reagan and his putative allies won't win this long-term struggle by throwing in the towel and saying *no mas* on this year's budget.

The president was working on his lines this week in pledging no new taxes during 1984, but he now needs something to focus attention on the spending side of the budget. The budget problem as currently defined—the dread deficit—will cause the president and his recovery to be portrayed as just one more part of the Washington problem.

Mr. Reagan needs a high road, and he has one within his grasp. It's called the line-item veto, which would rewrite the rules of the budget game now played in Washington. In the coming year, Mr. Reagan should let Congress wallow in the budget mudhole. He should propose to let the executive branch discipline congressional logrolling by vetoing specific parts of appropriations bills, and he should propose that money not be spent unless it goes through the appropriations process. This proposal is not part of the usual problem; it's a serious, state-tested solution to the problem.

The line-item veto will allow Mr. Reagan to devote the next year to defining the issue of economic governance on his own terms. It will allow him to focus attention on the specific reasons so many around him are crying for a "revenue plug" or "contingency tax." To wit, currently all these spending items are kept from public judgment by hiding them behind a single awful problem called "the deficit." A presidential campaign for the line-item veto will allow congressional incumbents

and challengers who share his agenda to position themselves clearly against an unpopular status quo.

The role being prepared by the Washington political community for Mr. Reagan is a loser. The line-item veto in his alternative.

[From the New York Times, Jan. 4, 1984]

PARTIAL VETO: A SURRENDER, OR A DEFICIT REMEDY?

(By Martin Tolchin)

WASHINGTON, January 3.—At just about every meeting with Congressional leaders, President Reagan asks the legislators to give him power to veto portions of appropriations bills instead of having to accept or reject measures in their entirety.

He is in good company. Every President since Ulysses S. Grant has asked for the so-called line-item veto, saying it was needed to overcome fiscal irresponsibility by a profligate Congress given to log-rolling and vulnerable to special interests.

Mr. Reagan enjoyed the line-item veto as Governor of California, one of 43 states that have some form of the measure. It is widely expected that he will include a plea for a Federal equivalent in his State of the Union Message later this month.

"He talks about it at every meeting," reports Representative Robert H. Michel, the Illinois Republican who is House minority leader. "He says, 'Give me a line-item veto up there; I can take the heat.'"

Faced with Federal deficits of \$200 billion and more, some members of Congress think the President is onto a good idea. "I just don't see the Congress with sufficient backbone to make the kind of expenditure reductions that have to be made," Mr. Michel said. "It's easier for the President to take that heat."

SOME SEE AN INTRUSION

But many other legislators consider the line-item veto to be an unwarranted intrusion into Congressional prerogatives and a device that would give the President and unfair political advantage. "The line-item veto would be an abrogation of Congress's jurisdiction and power," says Representative Silvio O. Conte of Massachusetts, the ranking Republican on the Appropriations Committee. "We are three separate branches and ought to keep it that way."

Nine bills proposing line-item vetoes were introduced last year, by lawmakers as politically diverse as Senator Alan J. Dixon, a liberal Democrat of Illinois, and Representative Jack F. Kemp, a conservative Republican of upstate New York. None came close to passage.

Because Congress has the constitutional power of the purse, many scholars and legislator believe that giving the President line-item veto power would require a constitutional amendment. That is what Mr. Dixon proposed. But the Senate shelved the proposal by a vote of 53 to 25.

Supporters of the line-item veto argue that it would enable the President to focus attention on items he considers wasteful, inappropriate or unwise, without holding hostage portions of an appropriation he does not object to. This, they say, would tend to discourage inclusion of projects that benefit only particular localities.

Some supporters argue that such authority would also redress a hobbling of the President's fiscal powers that they say has occurred through the years. "When our Constitution was written, bills generally covered only a single subject," Senator Dixon noted. Today, however, spending bills cover hundreds of subjects. The line-item veto would therefore restore to the President his constitutional prerogatives, Mr. Dixon argued.

But opponents contend that a President has ample authority to set the fiscal tone. They say that additional veto power would tip the balance to the President in compromising and negotiating.

They further argue that the proposed veto would do little to reduce the current deficit. The nation's current fiscal problems, they contend, derive from an increase in military spending, which this President supports, inadequate taxes, which this President is loath to increase, and automatic benefit programs like Social Security, which would be unaffected by the veto.

In the recently completed session of Congress, the Republican-controlled Senate rejected two variations of a line-item veto. One would have required the President to stay within a quarterly debt limit by, if necessary, holding back on the spending of funds Congress has appropriated. This proposal for impounding funds was shelved, 49 to 46. Another would have required the President to propose reductions

of up to 2.5 percent in the discretionary spending programs in the current budget. The Senate rejected that by a vote of 65 to 35.

Mr. Michel first proposed a line-item veto when Jimmy Carter was in the White House. He recently told Mr. Reagan that he planned in coming months to propose "a partial restoration of impoundment authority," which he hoped would be more palatable to his colleagues than a flat line-item veto.

Mr. Michel suggests that the President be given the right to cut up to 10 percent of any individual item, with an overall agency reduction of up to 5 percent. This would assuage liberals' fears that all the cuts would be made in social programs, Mr. Michel said. But some legislators say that if the Michel proposal was adopted, Congress would simply add 10 percent to its appropriations.

Congress jealously asserted its spending powers in the Budget and Impoundment Control Act of 1974. In that act, Congress declared itself fiscally responsible, created a budget act and negated President Nixon's assertion that he had the right to impound funds.

Congress then gave the President, the authority to rescind an appropriation with the approval of Congress, and also to postpone the spending of funds unless one House disapproval mechanism, some Congressional scholars believe the latter measure is unconstitutional under the recent Supreme Court decision banning legislative vetoes.

[From the Wall Street Journal, Jan. 5, 1984]

REAGAN TO SEEK A LAW ALLOWING HIM TO VETO ITEMS IN MONEY BILLS—IS HIS AIM TO REDUCE BUDGETS OR CUT EMBARRASSMENT? PASSAGE SEEMS UNLIKELY

POTENTIAL SAVINGS DEBATABLE

(By Laurie McGinley)

HARRISBURG, PA.—When Democratic state lawmakers pushed through a budget last summer that was \$1 billion out of balance, Republican Gov. Richard Thornburgh grabbed his blue pencil and struck back.

He cut one dollar in every eight, including funds for salaries and supplies for the Democratic-controlled House. The Democrats howled, accusing Gov. Thornburgh of "dictatorial" tactics, but four days later they produced a new, balanced budget.

"I guess I got their attention," the governor says.

In forcing a compromise, Gov. Thornburgh used a powerful tool—the line-item veto—to slash spending. The item veto allows him to make surgical cuts in spending without rejecting the entire budget and shutting down the government. Forty-two other governors have similar authority.

GOVERNOR'S PREROGATIVE

But Ronald Reagan, who wielded a line-item veto as governor of California, lacks that power as president; he must accept or reject entire appropriation bills. Thus, if Congress passes a \$10 billion appropriations bill that contains a \$500 million program the president doesn't like, he must either veto the entire bill or swallow his objection as he signs the legislation. He would like to change that. "The president of the U.S. should have line-item veto authority just as most governors do," Mr. Reagan insists.

Mr. Reagan currently plans to propose line-item veto power when he submits his fiscal 1985 budget to Congress early this year. Congress isn't likely to condone such new presidential powers, however, and many experts believe the change probably requires a constitutional amendment. Nevertheless, aides say the proposal could be a centerpiece of the president's reelection drive because it offers a way to reduce the political embarrassment of huge Reagan budget deficits.

A White House official nevertheless calls the idea "just good politics." A Gallup poll shows that 67% of Americans favor granting the president line-item veto power, 25% oppose it and the rest don't have an opinion.

The proposal would fit neatly into the Republican game plan of blaming the nation's fiscal mess on "liberal Democrats who want to raise taxes and increase spending," says Republican Rep. Newt Gingrich of Georgia. It also would dovetail with a proposed constitutional amendment to require a balanced budget, which President Reagan may bring back from retirement for the campaign.

POLITICAL PLOY?

But opponents say a line-item veto proposal would be a blatant political ploy to divert attention from an election-year deficit that could reach \$200 billion. They argue that the budgetary red ink results from the Reagan administration's rapid defense buildup and big tax cuts, rather than unbridled spending by Congress.

Even many congressional Republicans, including Senate Majority Leader Howard Baker, oppose the line-item veto. Oregon Sen. Mark Hatfield, the chairman of the Senate Appropriations Committee, says, "The president is playing charades."

Critics also fear that granting expanded veto authority would give too much power to a president—power that some chief executives might use to frustrate Congress by slashing defense spending or curtailing social programs. Most important, they say, a federal line-item veto wouldn't do much good because it couldn't be used on two gigantic budget headaches—interest payments on the national debt and entitlements programs such as Social Security, where spending is set by law. "It just wouldn't save much money," contends Alice Rivlin, the former director of the Congressional Budget Office.

During his eight years in Sacramento, for instance, Ronald Reagan used the line-item veto to reduce the legislature's spending plan by an average 2% a year. But on the federal level, less than half the budget (defense spending and domestic programs excluding the so-called entitlements) would be subject to a line-item veto. Even if Mr. Reagan reduced such spending by 2% in the current fiscal year, the saving would be only \$8 billion, just a sliver of the deficit.

BALANCING STATE BUDGETS

State governments are another matter. Many governors say the line-item veto has helped them produce the balanced budgets that most state constitutions require. In California, for example, Republican Gov. George Deukmejian deleted \$1.2 billion of spending proposals last year to bring the state budget into balance. In Illinois, Gov. James Thompson typically reduces the legislature's appropriations by about 3% a year to keep the budget balanced, state officials say. Missouri Gov. Christopher Bond, faced with a prospective recession-induced deficit, used the line-item veto to help keep the state in the black. "It helped save us," Gov. Bond says.

Governors and state budget officials agree that the authority to cut programs—and legislators' pet projects—greatly strengthens their negotiating position. "The line-item veto is much more powerful than the number of times it is used," says Robert Wilburn, a former Pennsylvania budget secretary. "Just by having it, you can avoid getting a bill you don't want."

The item also gives a governor a potent weapon for enforcing his own agenda. Many in Congress fear this type of power could create "an imperial presidency." Democratic state legislators in California say Gov. Deukmejian abused his budget-cutting authority by drastically reordering the state's priorities; he slashed education spending and beefed up law enforcement. The legislature's slim Democratic majority hasn't been able to attract enough Republican votes to produce the two-thirds tally needed to offset a financing cut that many fear will devastate the state's community college system. "It's tyranny by the minority," complains Willie Brown Jr. the Democratic speaker of the assembly.

There are other possibilities for abuse, some state lawmakers say. In Illinois, critics charge that Gov. Thompson sometimes takes potshots at the budget to settle political scores. Democratic State Rep. Ted Leverenz contends that flood-control funds for his district were slashed because he invited a Chicago columnist who is a frequent Thompson critic to testify in opposition to the Republican governor's personal budget request. "I got the message," Mr. Leverenz says. The governor's aides deny the cuts were political motivated.

Pennsylvania Democrats charge that Gov. Thornburgh made a blatant bid to expand his veto power by crossing out language, as well as dollar amounts, in the first budget. (In one instance, he declared "null and void" a legislative directive to sharply curtail his press operation.)

Whether the line-item veto would create such acrimony on the federal level would depend on politics. In Pennsylvania, where relations between the governor and the legislature are traditionally hostile, last year's budget battle was especially bitter because Republicans controlled the executive branch and the state Senate, while Democrats ran the House.

In states where a single political party or fiscal philosophy dominates, however, the governor's right to edit the budget is greatly accepted. In Missouri, for example, where Republican Gov. Bond sliced \$32 million from state budgets in three years, the conservative Democrats who control the legislature have been unruffled.

"We don't have much problem with it," says State Sen. Edwin Dirck, the Democratic chairman of the Senate Appropriations Committee. In fact, a line-item veto has been overridden just once in 160 years.

No one in Kentucky, where Democrats customarily hold all top elective offices, can even remember the last time the governor used the line-item veto. "Issues tend to be resolved before the legislature approves the budget," says Merl Hackbart, the state budget director, "although the simple fact that it (the line-item veto) exists gives the governor some leverage."

A president's use of the line-item veto of course, would be subject to congressional override, just as most state legislatures may reverse gubernatorial budget-cutting. Even so, chances are considered slim that Congress will approve expanding a president's control of the federal purse. "It's a silly idea," says New York Rep. Barber Conable, the ranking Republican on the House Ways and Means Committee. "It would give the president power to legislate, and no Congress would ever go along with that."

The idea that an executive should be able to edit budgets isn't new. George Washington complained about being forced to accept or reject legislation in toto. By the time of the Civil War, "logrolling"—vote-trading among legislators to ensure passage of special-interest measures—was so prevalent that framers of the Confederate constitution provided Jefferson Davis with line-item veto authority. After the war, several states embraced the idea as a way to curb the rising power of corporations. In Pennsylvania, where railroad interests allegedly were sending their attorneys to sit as representatives in the legislature, the line-item veto was added to the state constitution in 1874.

On the federal level, a president could use a line-item veto to cut congressional pork-barrel spending, but that would reduce the budget by only about 1%, contends Norman Ornstein of the American Enterprise Institute. The main reason for this is that about 85% of the budget is accounted for by Social Security and other entitlement programs, interest on the national debt and defense programs that are difficult or impossible to cut.

What is left is nondefense discretionary spending, which has already been slowed to a standstill during the Reagan presidency. Thus, to narrow the deficit Congress and the administration "must make unpleasant choices on defense, entitlements and revenues," says Wendell Belew, the chief counsel for the House Budget Committee.

Reagan critics say the president is already shrinking from this choice. He doesn't want to raise taxes and cut military outlays. And despite tough talk about congressional big-spenders, Mr. Reagan didn't follow through on the threats to use his veto power and signed every appropriation bill passed last year.

Advocates admit that the item veto wouldn't be a cure-all, but they believe it would enable the president to impose stiffer fiscal discipline on Congress. "Something has to be done around here," says Sen. William Armstrong, a Colorado Republican. "It's like hogs at the trough, especially in the House."

Rep. Jack Kemp, a New York Republican, Sen. Alan Dixon, an Illinois Democrat, and others have introduced various proposals to amend the Constitution to give the president line-item veto authority. Treasury Secretary Donald Reagan thinks, however, that Congress could give the president item veto authority without amending the Constitution. He argues that Congress could broaden the definition of the word "bill" to allow the president to veto individual items in appropriations measures.

Some administration officials want Mr. Reagan to resist any tax increases to cut the deficit until Congress strengthens the president's hand to cut spending with an item veto or some other new power. For example, they say Congress could pass a law giving the president the authority to reduce spending by a certain percentage in any given year or to refuse to spend funds under certain circumstances.

Any strategy, however, would require congressional action. And, despite strong public support for the item veto, Congress is resisting the change. "I'm afraid that the line-item veto is an idea whose time hasn't come," Sen. Dixon laments.

[From the Congressional Quarterly, Jan. 21, 1984]

REAGAN'S DEFICIT-CUTTING BID MAY SPOTLIGHT LINE-ITEM VETO—PROPOSAL WOULD AMEND CONSTITUTION

(By Dal Tate)

Rather than include significant spending cuts and tax increases in his fiscal 1985 budget blueprint, President Reagan has indicated that he will propose adoption of two constitutional amendments as deficit-fighting measures.

The first on Reagan championed during his presidential campaign and in 1982—a constitutional amendment that would require a balanced budget. Such an amendment narrowly passed the Senate in 1982, but lost in the House. (1982 Almanac p. 391)

The second is an idea that the president is proposing for the first time: to empower presidents to revamp, item by item, appropriations bill passed by Congress. When asked at a Jan. 13 meeting of Republican women officeholders what new initiatives would be offered in his State of the Union speech, Reagan said, "I can tell you about one that's going to be in there: I want a line-item veto."

Such a line-item veto would allow a president to reject spending for specific programs in appropriations bills rather than having to choose between swallowing a program he thinks is unpalatable and vetoing the entire measure. It would take a two-thirds vote of both chambers to override the veto.

If these ideas for constitutional amendments catch the public eye during the next few months, they may have the effect of shifting the national debate over record-high federal deficits from the substance of the problem to proposed changes in the means for coping with it.

By unveiling the line-item veto as a central part of his deficit-reducing strategy; as President Reagan is expected to do, he will almost certainly intensify public debate over the merits of granting the executive this kind of new power as a remedy for the nation's fiscal woes.

A line-item veto is touted by its supporters as the kind of tool that a president must have if he is to succeed in rooting waste from the federal budget and bringing government spending under control. Opponents, however, say that it would usurp the powers of Congress and, in any event, offers only limited deficit control.

Like the balanced budget amendment, the proposal for a line-item veto is viewed in Congress as having little chance of survival.

One Senate Republican staffer noted that the amendment would sharply enhance the authority of the president, not just the present occupant of the White House but others as well. "You can't repeal this when Walter Mondale becomes president," he said, "I think a lot of conservatives are looking at this in an unusually short-term perspective."

The antipathy among members of Congress toward anything that would diminish their control over spending is strong. One of the opponents is the Republican chairman of the Senate Budget Committee, Peter V. Domenici of New Mexico, who has voiced his doubts publicly.

And the difficulties in approving constitutional amendments are myriad.

But by offering these amendments, Reagan may manage to blunt what promises to be the thorniest domestic issue confronting his bid for reelection—enormous federal deficits.

LIMITED CONTROL

Among the many doubts skeptics have about the line-item veto is its limited scope as a budget-cutting device.

Since the veto would affect only actual appropriations, some of the largest components of the federal budget would be beyond the reach of the veto. These include entitlement programs such as Social Security, Medicare and Medicaid, for which mandatory spending is cemented in law.

Net interest, or the cost of financing the federal debt, is another item that would be left untouched.

If there were a line-item veto already at the president's disposal, it still would be of only limited utility in helping him achieve his goal of paring fiscal 1985 spending.

During testimony before the Senate Finance Committee on Dec. 12, Congressional Budget Office (CBO) Director Rudolph G. Penner presented the most recent estimate of federal outlays. (1983 Weekly Report) p. 2675)

CBO's figures show that in fiscal 1984, which began Oct. 1, net interest alone will total \$105 billion.

Of total fiscal 1984 budget outlays, CBO estimated non-defense discretionary spending—that is, spending for all programs other than defense—will made up only slightly over 18 percent. If defense is added, total discretionary spending amounts to 45.7 percent of fiscal 1984 outlays.

DISCRETIONARY ITEMS

If granted the line-item veto, Reagan technically could use it to veto some defense spending. But defense is an area where he is advocating more spending than Congress is likely to approve. That leaves mainly the 18 percent of total outlays, or by CBO's reckoning \$154 billion in fiscal 1984 outlays, that would be affected by the line-item veto.

Yet much of this discretionary spending portion of the budget includes items that Reagan would be unlikely to cut—such as funds for the Federal Bureau of Investigation or the space program.

If using the line-item veto could have only minimal effect on the deficit, Reagan nonetheless might want to use the veto as an instrument to achieve specific program cuts rather than to further macroeconomic policy.

In each one of his budget submissions, for instance, Reagan has proposed eliminating the Legal Services Corporation (LSC). In his energy budget, the president has consistently tried to eliminate renewable energy programs, such as solar energy.

He signed an essential supplemental appropriations bill (PL 98-181) that contained money Reagan wanted for the International Monetary Fund. But the measure also included funds for members' pet projects, such as highway construction in House Appropriations Committee Chairman Jamie L. Whitten's, D-Miss., district, that Reagan might have vetoed had he possessed line-item veto authority: (1983 Weekly Report p. 2457)

Because bills containing money for these specific programs were on balance acceptable, Reagan signed the measures and took the bad with the good. With a line-item veto he could have rejected funding for the LSC, for instance. And only with a two-thirds vote could Congress have overruled him.

TOOLS ALREADY THERE

Reagan had use of the line-item veto when he was governor of California. It is a power now enjoyed by 41 of the nation's governors, according to the National Conference of State Legislatures.

Although the president does not possess line-item veto authority, because of the 1974 Congressional Budget and Impoundment Control Act he does have some power to delay or cancel the spending of appropriated funds. (Background, 1983 Weekly Report p. 2352)

Just as with the line-item veto, both are subject to congressional review.

To simply delay funds temporarily, the president can defer outlays. The deferral stands unless either the House or Senate passes a resolution directing that the money be spent. Congress may act on a deferral at any time.

But if the president believes the money should not be spent at all, he must propose that Congress rescind the appropriation making the funds available. In that case both the House and Senate must approve the rescission with 45 days. If the two houses do not act, the president must release the funds at the end of the 45-day period.

With a line-item veto the president could cut a program if he got one-third of the members in either the House or Senate to agree with him. But using a rescission he wins only if he has a majority in both chambers and if he can convince both to act on an issue.

AVOIDING LEGAL ISSUE

A 1983 Supreme Court decision against the use of legislative vetoes has thrown into limbo the use of deferrals. Rescissions, because Congress must act affirmatively, were not affected by the ruling. (1983 Weekly Report p. 1331)

By calling for a constitutional amendment allowing a line-item veto Reagan would avert the legal problems of the legislative veto.

Proposals for a constitutional amendment allowing the line-item veto were introduced in the first session by Sen. Mack Mattingly, R-Ga. (S J Res 178); Rep. Jack F. Kemp, R-N.Y. (H J Res 357); and Rep. Henry J. Hyde, R-Ill. (H J Res 391).

Mattingly has also introduced a bill that seeks to accomplish the goal without passage of a constitutional amendment.

Sen. Alan J. Dixon, D-Ill., has offered a constitutional amendment (S J Res. 26) to give the president a line-item veto, but allow Congress to override him by a simple majority of both chambers.

In a "Dear Colleague" letter written Jan. 17, Kemp summarized the views of those in Congress who support adoption of a line-item veto. Kemp wrote, "A line-item veto will save a substantial amount of tax dollars by allowing the president to delete unnecessary expenditures tacked onto overall appropriations bills.

And he concluded, "Given the severity of our current budget problems, I hope you share with us the belief that this amendment is both warranted and necessary to offset the inability of Congress to place meaningful controls on federal spending."

AMENDMENT PROCESS

In choosing a constitutional amendment approach for his budgetary problems, Reagan will have to run a procedural gauntlet. Unlike bills, which need only a simple majority to pass, constitutional amendments pass only if approved by a two-thirds majority—67 senators, if all members are present and voting, and 290 representatives, if all are present and voting.

This super majority is difficult to attain. In addition, any amendment must be ratified by three-fourths (38) of the states. Far more amendments have been proposed than the 26 that have been added to the Constitution.

In Reagan's own presidency three proposed amendments have been rejected, two despite his support. In 1982, he championed the balanced budget proposal. (1982 Almanac p. 391).

On June 28, 1983, the Senate decisively rejected an amendment that would have opened the way for new anti-abortion laws. The measure failed to command even a simple majority, let alone the necessary two-thirds vote. (1983 Weekly Report p. 1360)

The proposed Equal Rights Amendment (ERA), which Reagan opposes, has been rejected twice since Reagan became president. One ERA proposal died June 30 1982, three states short of the necessary 38 for ratification. The identical proposal was considered by the House Nov. 15, where it fell six votes short. (1983 Weekly Report p. 2419)

Reagan also has proposed an amendment to allow organized, recited prayer in the public schools. A divided Senate Judiciary Committee approved the proposal (SJ Res 73) along with an amendment, sponsored by Sen. Orrin G. Hatch, R-Utah, allowing silent school prayer. (1983 Weekly Report p. 1465)

Neither proposal is expected to be approved by the Senate. Even if one were, however, it would face significant hurdles in the House.

Senior staffers on the House and Senate Judiciary committees hold out little hope for the line-item veto proposal. Both committees discussed the issue during 1982 hearings on the balanced budget amendment, but the veto proposition was not well received then.

The Senate Constitution Subcommittee may hold hearings on the matter in 1984 under an agreement with Dixon. Dixon had offered an amendment to the balanced budget proposal in 1982, and in exchange for his withdrawing it, Hatch promised to hold hearings on the line-item veto.

[From the Journal of Commerce, Jan. 27, 1984]

SMALL BUSINESS HELD FAVORING LINE-ITEM VETO

Small business owners favor allowing the president to veto specific line items when reviewing appropriations bills, the National Federation of Independent Business reported after a survey of its members.

Of the 37,924 small businessmen who responded, it said, 67 percent approved controlling spending for government programs on a line-by-line basis. At the same time, 25 percent opposed changing the all-or-nothing budget process and 8 percent were undecided.

John Hotley, deputy director of federal legislation for the group, which claims to be the nation's largest small-business organization, predicted that, if President Reagan asks for line-item veto authority, Congress would receive the request with mixed results—passage in the Senate and tougher going in the House.

He pointed out that 43 state constitutions allow some form of line-item veto by the governor, and "governors have cut waste without interrupting the smooth operation of the government."

Mr. Hotley also commented that "too often the president feels compelled to veto a bill he otherwise favors because of strong disagreement on one or two specified items."

Giving the president power to approve a federal agency's budget but cut money for specific programs or personnel would keep a spendthrift Congress in line and could aid in trimming budget deficits, he argued.

He noted that the idea would not change the power of the legislative branch to override a presidential veto.

[From the Washington Post, Jan. 27, 1984]

BARGAIN GOVERNMENT

(By George F. Will)

Ronald Reagan, heeding the axiom that a compliment can be a forensic anesthetic, used a part of a paragraph in his State of the Union address to compliment Congress. But Tip O'Neill, looking even more than usual like a rolling stack of cumulus clouds, said "Blech!", or words to that effect. Evidently he knows that Reagan's proposal for a demicommission on deficit-reduction measures is evidence for the axiom that when people seek advice they are seeking accomplices.

For decades, conservative after-dinner speakers convulsed audiences with this thigh-slapper. "We're not getting all the government were paying for—thank God!" But in 1984, a conservative administration is cheerily telling the country that it need not pay for all the government it is getting. As Sen. Pat Moynihan says, this administration has made big government cheap: for every dollar of government, it asks only 78 cents in taxes. (Never mind that if the deficit path is unchanged, by 1989 half of personal income-tax revenues will be needed just to pay the interest on debt, and every percentage point increase in interest rates may add \$15,000 to the 30-year cost of a \$55,000 mortgage.)

Reagan is requesting an item veto—power to strike a particular item from an appropriations bill rather than choose between signing or rejecting a huge spending package. The best reason for granting his request is that it would strengthen the presidency. An item veto gives the president the power that makes government work—the power to inflict pain, and hence to instill fear. Forced to choose between meddling with foreign policy and preserving a cherished spending project, many congressmen would lose interest in playing secretary of state.

For reasons of institutional self-interest, Congress probably will not approve an item veto, although one argument against the veto is that it would enable Congress to be irresponsible. It could vote for every project favored by the home folks and say it is the president's job to weed the garden.

An item veto would do less than broad powers of impoundment, rescission and deferral would do to control spending. True, an item veto can occasionally be a big weapon. Last year Richard Thornburgh, Pennsylvania's Republican governor, used it to knock one of every eight dollars out of the budget concocted by the legislature. He even vetoed all funds for the operation of the state house of representatives, which Democrats control. But no government can be routinely run by such bruising methods.

Gov. James Thompson of Illinois generally uses the item veto to reduce appropriations by about 3 percent. As governor of California, Reagan used it to reduce spending about 2 percent. If he did as much with the federal budget, he would cut the fiscal 1985 deficit just \$18.5 billion. But he could not do as much because the federal budget is fundamentally unlike state budgets. It is fundamentally less susceptible to control by vetoes, item or otherwise.

The entitlements component is huge and politically protected. The interest component is large and not optional. And this president thinks defense spending is too low. (Congress cut his fiscal 1984 defense request by \$4.7 billion.) That leaves all other discretionary social spending—about 19 percent of the budget—as the target for item vetoes. Reagan could take a long, sharp pencil and turn it into a short, dull pencil by vetoing every item in this portion of the budget, and the budget still would not be balanced.

A president's most formidable constitutional power is negative—the blocking power of the veto. Reagan has not vetoed a single appropriations bill passed by the current Congress. Why not? Because in passing 10 of 13 appropriations bills, and continuing resolutions, Congress has appropriated just \$3.2 billion more than

Reagan requested for fiscal 1984. If facts can counter the public's prejudice against Congress, the fact should complicate any Reagan plan to run against Congress as the culprit in the deficit drama. Even more complicating will be Reagan's Budget Message.

It will propose cuts for fiscal 1985 amounting to less than 1 percent of non-defense, non-interest spending; it will project deficits averaging approximately \$180 billion over the next three years; and it will say that even after three years like that, the T-bill rate will be just 6.1 percent. As an example of claiming too much, that calls to mind the Havana museum that claimed to have two of Christopher Columbus' skulls, one from when he was a boy and one from when he was a man. The human race, said Mark Twain, consists of the dangerously insane and such as are not. We know to which group belong the authors of the T-bill projection.

[From the Washington Post, Jan. 27, 1984]

THAT VETO

(By Fred Graham¹)

Based on the law of averages, Ronald Reagan's request to Congress to give him the item veto would have to be considered a legislative long shot. Six presidents before him have made the same request—Grant, Hayes, Arthur, Wilson, Roosevelt and Eisenhower. The last time it got out of a congressional committee was in 1884.

Savvy political observers say the president's request is a ploy anyway. It goes like this: he asks Congress for something he knows he's not going to get (a constitutional amendment giving the president the power to veto items from appropriations bills without vetoing the entire bills—the better to strike down log-rolling, pork barreling, and \$200 billion deficits), and then he finesses responsibility for the budget mess by lambasting Congress for denying him the item veto.

As a ploy, it might get a guy through an election year, but it has one potential flaw: there's a way President Reagan can get his item veto amendment if he really wants it, a provision the Founding Fathers tucked into the Constitution for just such a situation—and one that has, in fact, already been tested and proven in a circumstance such as this. It's found in the Constitution's Article Five, which sets out how the Constitution may be amended.

One way is the familiar procedure by which Congress proposes an amendment, and three-fourths of the states ratify it. All the amendments so far have been adopted this way. But the crafty statesmen who drafted the Constitution suspected that Congress might, for reasons of its own, refuse to propose certain needed amendments. So Article Five includes a second way to amend the Constitution: two-thirds of the states may apply for a constitutional convention, which would draft the amendment, to be submitted to the states for ratification.

The moving force behind this provision, George Mason, feared that without it, Congress might "become oppressive," and thus "no amendments of the proper kind would ever be obtained by the people." In fact, Congress has never refused to propose amendments due to the kind of Potomac-fever orneriness Mason feared. Congress has, in general, been more willing than the public to modify the Constitution, as witnessed by the fate of ERA. But there has been one circumstance in which Congress has, on occasion, dug in its heels against amendments the public seemed to want—when the change would affect its own prerogatives. And on the one notable occasion when Congress persisted in protecting its own turf in the face of a strong public current in the opposite direction, Mason's sleeper in Article Five worked splendidly to carry the day.

It happened at the turn of the century, when there was much public disapproval because senators were selected by politicians from their home states and not by popular elections. The senators found the situation to be cozy as it was, and refused to propose a constitutional amendment to require popular election.

So a campaign was launched to have state legislatures approve applications for a constitutional convention to propose a popular-election amendment. In 1908, just as the necessary two-thirds of the states (then 23) petitioned for the convention, Congress caved in and proposed what is now the 17th Amendment.

The item veto issue contains many of the same elements. The public seems to favor it, and Congress' objections are basically institutional—that it would erode the power of Congress and strengthen the "imperial presidency." There clearly are

¹ The writer is law correspondent for CBS News.

questions concerning whether the item veto would do much to trim those megadeficits. The bulk of the budget is veto-proof: interest on the debt, Social Security, defense and other sacred cows. But there unquestionably are pork-barrel items that deserve to be vetoed, as many state governors have demonstrated. And it is clear that the real reason Congress has refused even to debate the idea for the past century is the narrow interest of preserving the pork.

Perhaps the item veto is a good idea, worth more than service as a ploy to finesse an awkward political issue. If Reagan really wants it, there's no reason he should ask just Congress to propose the language. The Constitution gives the state legislatures equal billing in this performance, and the president could properly ask them to pass resolutions calling for a constitutional convention to act on the item veto. In this political year, it could turn into a stampede.

For those who quake at the depredations that such a constitutional convention might do to the Bill of Rights and the Equal Protection Clause, fear not. Congress would never let the states reach the magic two-thirds. It would, first of all, give the item veto the kind of scrutiny it merits—and that might cool off some of the enthusiasm for it. But if not, Congress would surely propose its own item veto amendment before the states forced it to call a constitutional convention. For Congress, it would be the lesser of two evils, as it was when they gave us the right to vote for our senators.

[From the Washington Post, Jan. 28, 1984]

DEMOCRATS CONSIDERING VETO RIGHT—MOVE SEEN FORCING PRESIDENT TO ACT ON BUDGET CUTTING

(By T.R. Reid and Juan Williams)

House Democrats are considering legislation to grant President Reagan one of the major requests in his State of the Union address—the line-item veto—on a one-year trial basis.

Rep. Tony Coelho (D-Calif.), chairman of the House Democrats' political campaign committee, said he and Rep. David R. Obey (D-Wis.) will urge colleagues next week to authorize an "experimental" line-item veto power for 1984 to force Reagan to bear the political costs of cutting the budget.

"Ronald Reagan loves to talk about cutting the budget, but when it comes to specifics, he always ducks," Coelho said. "This way, the president would have a chance to make it known where he wants to cut."

In his address to Congress Wednesday, Reagan championed the line-item veto, which would permit a president to cut specific items from the comprehensive multi-billion-dollar spending bills passed by Congress.

Presently a president must approve or reject such bills as a whole.

The new congressional thrust came as the president sought to parry Democratic charges that his proposal on the deficit—bipartisan negotiations involving White House officials and legislators from both parties—was a gambit to dodge responsibility for the large deficits run up since the start of the Reagan administration.

"I'm serious about negotiating a down payment on the budget," Reagan told House Republicans at a White House breakfast. "This is not a political posturing as some have suggested."

The House Democratic leader, Speaker Thomas P. (Tip) O'Neill, Jr. (D-Mass.), continued to treat the president's proposal as a political snake pit.

"The speaker is extremely suspicious," said his spokesman, Chris Matthews.

"He [Reagan] has talked about these bipartisan commissions before, and it's always a media side show to avoid the political heat."

Evoking a frequent episode of the "Peanuts" comic strip, Matthews said the president "is like Lucy telling us to come on up and try to kick the football one more time."

O'Neill is determined that the president present his plans for cutting the deficit, so that he can bear the responsibility.

Accordingly, the speaker said that his envoy to the deficit negotiations, Majority Leader James C. Wright Jr. (D-Tex.), will not start talking until Reagan sends his new budget to Congress Wednesday.

Coelho argued that the line-item veto plan would be another way to tie Reagan firmly to the deficit. "If the president really wants to cut domestic programs even further, let him do it item by item," he said.

White House spokesman Larry Speakes, asked about the Democrats' plan, said "if it comes to fruition we'll tell you if we'll buy this." He added that "we like the line-item veto, we like in 1984 and we'd like it throughout."

At his breakfast meeting yesterday, Reagan said he would not rule out any proposal to cut the deficit, which was just under \$200 billion last year.

"But I do think that we should try to concentrate on the less contentious issues," Reagan said. "If we all focus on what's doable, we can get something done for the American people."

Later in a closed question-and-answer period with the congressmen Reagan was asked by Rep. Edwin V.W. Zschau (R-Calif.) if his efforts to reduce the deficit were serious.

According to Rep. Michael G. Oxley (R-Ohio), "He said that everything's on the table that they had for deficit reduction from both sides—the legislative leadership as well as the administration—would be on the table and open to discussion. * * * He said nothing was ruled out in terms of deficit reduction."

Oxley said Reagan did mention that one of the possibilities was to enact some of the spending reductions recommended by his so-called Grace Commission.

At the noon White House news briefing, Speakes said the president meant that nothing had been ruled out to make up the \$100 million "down payment on the deficit." He said that included possible cuts in defense spending as well as tax increases.

Asked how the president could consider tax increases after saying in the State of the Union he was unequivocally opposed, Speakes said the president meant he was opposed to "tax increases that would hurt the recovery."

[From the Washington Post, Jan. 30, 1984]

REAGAN TOLD OF LINE-ITEM VETO HURDLES

(By Juan Williams)

President Reagan's aides warned him before his State of the Union address that a constitutional amendment giving him line-item veto authority was unlikely to be adopted by Congress, would meet ratification resistance in the states and in any case would not be approved in time to cut federal spending any time soon.

As a possible alternative to the line-item veto, his aides suggested a statutory approach—enacting regular legislation to increase his power to "rescind" congressional appropriations, according to a White House background paper obtained by The Washington Post.

They noted that such a proposal, by Sen. William L. Armstrong (R-Colo.), had come within three votes of passing the Senate in November, even without presidential support.

Reagan, however, went against his aides' advice and proposed the line-item veto because it is a stronger election-year symbol of his resolve to cut the federal budget and a device he used as governor of California, according to White House officials.

But White House and congressional budget experts note that most of the federal budget would be out of reach of line-item veto because more than 80 percent of it is composed of entitlement programs such as Social Security, interest on the national debt and the defense budget, items that cannot be cut or that Reagan does not want to cut.

The president's language in the State of the Union address seemed to hint at the internal debate about alternatives. After urging that he be given line-item veto power—the right to kill individual items in an appropriations bill instead of approving or vetoing the entire bill as he must now—Reagan said, "It would be most effective if done by a constitutional amendment."

In the December background paper circulated among top White House officials and shown to the president, administration officials portrayed the line-item veto as at best a distant possibility likely to have limited impact on the current record budget deficit.

"Even under the best of circumstances," the paper said, "a constitutional amendment [for a line-item veto] would probably not be ratified for several years whereas a statute could be enacted in a matter of months. Thus, only proposing a constitutional amendment would likely not produce a tool that could be used to help reduce outlays in the near term."

As an alternative, the paper indicated that the president could request an increase in his power to rescind appropriations once they are made.

"Enhanced rescission authority not only could be enacted quickly, but it builds on current rescission law * * *" the paper said after noting that amending the Constitution for line-item veto would be difficult.

Unlike line-item veto authority, the paper said, there probably would be no constitutionality problem with increased rescission authority because it would not infringe on Congress' right to enact appropriations.

"The Justice Department believes that a properly drafted enhanced rescission bill would ultimately be held constitutional," the background paper said.

Under current law, the president can rescind specific appropriations only if both Houses of Congress approve the rescission by majority vote. Armstrong's Senate bill proposed instead that presidential rescissions would take effect unless Congress acted to overturn them in 45 days.

"It turns the presumption around," said Armstrong, whose proposal was defeated in November by a vote of 49 to 46. "If there is no action under this bill, then the savings stand."

Armstrong's aides said after the State of the Union address that Armstrong supports the line-item veto but that it could take years to be approved, while increased rescission authority could be achieved this year.

The White House background paper said the major disadvantage of the line-item veto is that "Congress is unlikely to permanently cede line-item veto authority to the president.

"[And] even states with line-item veto authority in their state constitutions might be reluctant to give such authority to the president when it might be used to reduce federal grants to state and local governments."

The paper ended the list of disadvantages by noting: "The process of amending the Constitution is lengthy and would probably not provide any authority for dealing with near-term government spending."

The president's current power to rescind appropriations was granted in a budget reform act of 1974. That act was intended in part to combat President Richard M. Nixon's assertion that he had a unilateral right to impound appropriated funds.

Armstrong noted in an interview that since 1975, 41 percent of presidential rescissions have been rejected by "congressional inaction." He said that amounts to \$21.5 billion in spending that Republican and Democratic presidents have judged to be wasteful.

Citing disadvantages of the rescission approach, the White House background paper said that, unlike a constitutional amendment, it would be "subject to amendment or repeal by subsequent Congresses and/or successful judicial challenge on the grounds that it impermissibly interferes with constitutional assignment of the legislative power to Congress."

[From the Christian Science Monitor, Jan. 30, 1984]

THE LINE-ITEM VETO WOULD GIVE PRESIDENT NEW BUDGET LEVERAGE

(By Richard L. Strout)

WASHINGTON.—What has Ronald Reagan in common with Jefferson Davis? They both favored the line-item veto. It would allow the President to pick and choose what he would veto in legislation sent him by Congress. Jefferson Davis had the power; Ronald Reagan says it's a good idea. So have other US presidents.

In his State of the Union message last Wednesday, the President revived the controversy that has burned brightly at times. He said he wanted "structural reforms" in the American government to help control the deficit.

"Some 43 of our 50 states grant their governors the right to veto individual items in appropriations bills without having to veto the entire bill," he said. "California is one of those 43 states. As governor, I found this 'line-item veto' was a powerful tool against wasteful or extravagant spending. It works in 43 states—let's put it to work in Washington, D.C., for all the people.

"It would be most effective if done by constitutional amendment," Mr. Reagan added.

Giving the President line-item veto would alter power values in Washington. Strengthening the chief executive's control might reduce stagnation and deadlock in government; at the same time, it would reduce congressional authority. Instead of having to veto an entire bill to get it stopped, a president could knock out individual features line by line. In United States history this issue has been raised a number of times:

Andrew Jackson in a brush with Congress in 1830 signed a bill and simultaneously sent a message to Congress interpreted as limiting its range. The House had recessed but subsequently implied that Jackson had sought a line-item veto.

President John Tyler in 1842 did much the same thing as Jackson, but this time a House committee issued a counterreport of protest charging the action was "a defacement of the public records and archives."

The Confederate States adopted, Feb. 8, 1861, a line-item veto provision. Following the Civil War several states incorporated the feature in their constitutions.

President Ulysses S. Grant urged Congress in 1878 to amend the Constitution to authorize a president "to approve of so much of any measure passing the two houses of Congress as his judgment may dictate, without approving the whole."

In 1879 President Rutherford B. Hayes, and in 1882 President Chester A. Arthur, renewed the request.

In 1883 the proposal was put to a House vote but failed to get the necessary two-thirds constitutional majority required.

In 1884 the Senate Judiciary Committee approved the idea but Congress did not act.

In 1913 the House held committee hearings; nothing was done.

Franklin Roosevelt proposed a variation of the plan in 1938, which failed in the Senate.

In 1949 the Hoover Commission implicitly called for the item veto affecting certain appropriations.

President Nixon impounded funds voted by Congress (in effect vetoing them).

Now President Reagan renews the proposal.

Under the system of divided powers, the US for almost 200 years has successfully operated a unique division of power in Washington between executive, legislature, and judiciary. More and more questions have risen recently because of greater complexity, acceleration, and awesomeness of problems.

The Washington mood is hopeful, but uncertain because of the prospect of a \$200 billion annual deficit. New proposals are being made. In effect President Reagan acknowledges this in coming back to the item veto.

Other constitutional proposals are also being discussed. One is a call for a constitutional convention to require Congress to balance the budget. The Constitution allows the states to call such a convention, but the right has never been implemented. Sponsors are just two states short of two-thirds of the legislatures needed to call the convention. Backers argue they can confine the convention, if summoned, to the single subject of the balanced budget. Others are concerned that the untried convention would be able to revise America's entire system of government.

There is little agitation today for Reagan's proposed line-item veto. On the other hand, supporters of the no-federal-deficit proposal have been active for years. They have made their approach through the Article 5 route. This says in part:

"The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several States, shall call a convention of proposing amendments. . . ."

[From the Washington Post, Jan. 31, 1984]

BAKER SUGGESTS ALTERNATIVE TO LINE-ITEM VETO

(By Helen Dewar)

Senate Majority Leader Howard H. Baker Jr. (R-Tenn.) yesterday suggested that Congress consider strengthening the president's power to rescind appropriations as an alternative to the "line-item veto" constitutional amendment that President Reagan has requested.

Baker told reporters that he is reexamining his past opposition to the amendment, under which a president could veto individual spending items in bills that he must now sign or veto as a whole.

But he said Congress might "do more good" by passing legislation to expand the president's power to rescind appropriations, which was restricted by Congress after its budget impoundment fights with President Nixon 10 years ago.

"I really am afraid if we had line-item vetoes Congress would start sending [the president] appropriations bills with [just] one line," said Baker.

Legislation to require presidential spending cuts when the federal debt exceeds quarterly ceilings imposed by Congress failed by only three votes in the Senate last November and is expected to be reintroduced in some form this year.

Legislation along this line was suggested by Reagan's aides as an alternative to a constitutional amendment but rejected by the president because he wanted a stronger election-year symbol of his desire to cut the budget, according to White House officials.

Baker said there is a good chance that some kind of strengthened rescission power for the president would pass this year. An aide said prospects probably are brighter in the Republican-controlled Senate than in the Democratic House.

Democrats have been cool in the past to strengthening the president's purse-string powers, although House Democrats have tried to call Reagan's bluff by suggesting that they might consider a line-item veto in conjunction with a freeze on defense spending.

Baker's revival of the rescission issue came as House Speaker Thomas P. (Tip) O'Neill Jr. (D-Mass.) and the White House continued to spar over the president's proposed bipartisan negotiations to produce a \$100 billion "down payment" on deficit reductions.

As presidential aides denied earlier Democratic charges that the administration contrived the negotiations as a campaign ploy, O'Neill said Reagan was trying to "pass the buck" on deficits and reiterated that the responsibility of proposing spending cuts and tax increases rests with the White House.

Among Democratic concerns was a fear that fast-track action on relatively easy deficit reductions would leave Congress without any "sweeteners" to help pass its own deficit-laden budget resolution this spring. But the Democrats and the administration may be able to work something out if the "sweeteners" are included in the budget and Reagan will agree to help pass it, sources said.

But even among Republicans, there appeared to be some question of how much could be done in an election year.

While Senate Finance Committee Chairman Robert J. Dole (R-Kan.) said he was "very optimistic" about prospects for swift action, Baker gave conflicting signals. After first telling reporters he doubted anything more than "meaningful deliberations" was possible before the elections, he said later through an aide that he meant only that work would have to continue over a longer period. The aide said Baker believes Congress will take some pre-election action on the deficit, but he did not put a price-tag on it.

White House officials have said they want congressional action on the \$100 billion "down payment" within a few months, and Dole said yesterday he hoped a compromise could be worked out in 30 to 40 days.

[From the Wall Street Journal, Jan. 31, 1984]

RONALD REAGAN'S VETO

When Ronald Reagan's State of the Union address carried the news that he would seek a constitutional amendment giving the president line-item veto power over congressional appropriations squeaks of alarm were heard from gopher holes all over the capital prairie. These squeaks deserve an answer.

The most oft-heard squeak is that the line-item veto shouldn't be passed because it doesn't go far enough. A group as diverse as the New Republic, George Will and Rep. Jim Jones's budget committee has been running a competition to come up with figures showing that it would apply only to a tiny percentage of the budget. The various calculations uniformly start by excluding entitlement spending, Congress having arranged things to spend without appropriations that could be vetoed. This much is at least factually accurate.

Then, however, the calculations exclude the entire defense budget, on the ground that the current president favors higher defense spending and despite the fact that Pentagons and presidents from time immemorial have recommended base-closings precluded by congressional logrolling. From there on the calculations get truly ingenious, and everything in the budget becomes "uncontrollable." Rep. Jones's budget committee wins the prize with the contention that the veto would apply to only 1.5% of the budget, not of the deficit.

The "current law" that makes spending "nondiscretionary" or "uncontrollable" was, of course, not a law handed down on Mount Sinai. Congress passed these laws, and the Constitution says Congress can change them. It is both repulsive and immoral for the legislators of this or any government to say that programs they en-

acted into law must spend hundreds of billions of the public's money every year because programs are "uncontrollable." This is the public morality of Marie Antoinette.

If the critics who believe the line-item veto doesn't go far enough are halfway serious, they ought to be proposing something more sweeping. They have a point that entitlements go uncontrolled, but Congress can change this by passing just one law. That law will say that all annual federal disbursements must appear in a new appropriation bill, which would be subject to a line-item veto.

Now, in fact, even without such a sweeping provision, the item veto would limit spending in several important ways. First of all, it would apply to much of the budget. In particular, the item veto would allow the chief executive to create what Alan Greenspan calls a "reverse wedge" against open-ended spending programs: By vetoing small amounts in one year, the president could stop programs from mushrooming and at the same time expanding their constituencies. For one example of a program that does require appropriations, take Section 8 housing, a rent-subsidy program. It began 1976 with an initial outlay of \$42 million; by 1981 that program had grown to \$3 billion.

Even more important, the item veto would have wide-ranging political effects, changing the balance of power between economizers and spenders in Washington. From all available evidence it is perfectly true that the budget is uncontrollable within the current institutional arrangements in Washington. The item veto would be a giant first step toward changing those institutional arrangements, as it has been in nearly all our state legislatures. Last October, Congress passed a single, \$91 billion appropriation bill for several departments, which the president was supposed to sign or veto in toto. That's a nonsensical situation.

An item veto would allow the president to focus both his budget priorities and the public debate about those priorities. Not so incidentally, the public then could hold the president responsible for the budget outcome. Administrations, which currently see little sense in proposing budget cuts they know will be defeated, will be much bolder in proposing economies they can enforce. No president is going to flat-out kill the food-stamp program with an item veto, but he could use or threaten to use it to force Congress to fix the open spigot. And who knows, a congressman who got his dam or farm subsidy vetoed might even be more willing to apply some fiscal discipline when it came time to vote on entitlements.

The whole purpose of the item veto is to entirely rewrite the rules of the spending game. In fact, the reason its critics strain so to find arguments against it is that it would start to change the entire culture of Washington. There is an atmosphere of defeatism in the current attitude toward the budget. The administration's own Hamlet, David Stockman, tells *Fortune*: "I can't foresee that anytime in this decade we will have the kind of people in Congress who will abolish those things." If the line-item veto is so arithmetically harmless, there is no conceivable reason in the world not to try it. And if, like the court of Louis XIV, the Washington establishment is thoroughly enervated, there is very little ground for it to object to the proposals of people who still have energy and will.

[From the *Christian Science Monitor*, Feb. 1, 1984]

VETOES AND DEFICITS

In urging that Congress and the states enact a constitutional amendment for a line item veto, President Reagan is taking a position supported in one fashion or another by almost every president since Ulysses Grant. A line item veto would enable a president to delete individual parts of an appropriation bill rather than having to kill the entire bill, as is now the case. Such a veto would sharply expand the power of the White House vis-a-vis Congress. Federal funding for the states would also be subject to the line item veto.

For precisely these reasons, it is unlikely that Congress or the states will approve such a constitutional amendment in the near future. Besides, even if President Reagan had additional expenditure-curbing authority—as Mr. Reagan called for in his State of the Union message—the line item veto would not target most federal spending. In other words, a line item veto falls far short of being a practical solution to reducing current and future budget deficits that, according to the Congressional Budget Office, could reach \$325 billion by the end of this decade if fiscal policies remain unchanged.

Over four-fifths of the budget would be protected from such a veto—including entitlement programs, defense spending, and interest on the national debt. Many entitlement programs cannot be substantially cut because of law. Other federal programs, like defense, are programs that Mr. Reagan would be loath to reduce.

A number of bills for line item veto are before Congress. It is interesting to note, however, that the Republican-controlled Senate recently rejected two measures that would be somewhat similar to a line item veto, but would not require a constitutional amendment. Both measures, which would increase the authority of the president to rescind certain funds appropriated by Congress were defeated.

What is really the job that needs to be done? Is it not fashioning a political consensus in Washington—and a national consensus on the part of the American people—to make broad and far-reaching structural changes in the federal budget? That means rethinking and rearranging the huge defense program now in place. It means rethinking and restructuring expensive entitlement programs, such as medicare.

Granted, a line item veto could serve as a goad to budget reform. Congress should consider that possibility. And, as Mr. Reagan correctly notes, governors in 43 states have variations of such a veto. Mr. Reagan skillfully used line item veto authority when he was governor of California. Many states, however, have a balanced budget requirement—which makes such a veto effective. The federal government, contrast, must often borrow against the future, such as in the case of war or economic downturn, to prime the economy or bring about certain policy results.

The real challenge remains the deficits. Is it really impossible for the White House, Congress—and yes, the American people—to reach a national consensus on the deficits? Given hard bargaining and determination such a consensus need not be considered improbable.

In considering whether President Reagan and the Democrats are all that far apart on the need to reduce deficits, it might be noted that Democratic contender Walter Mondale has now come forth with a plan to reduce and federal deficit by "more than half." Republicans, and some Democrats, maintain that the Mondale plan is vague and the figures are questionable. The point that needs to be kept in mind, however, is that both President Reagan and former Vice-President Mondale are now looking at the budget numbers—seeking ways to reduce the deficit. So too are other Democratic contenders. That is step one in reaching a consensus.

One final thought seems warranted here: Just as a line item veto would be only a goad toward budget reductions, so turning to the recommendations in the Grace commission report on federal waste will not by itself reduce the deficit all that much. Many of the proposals are useful. But even Republican-oriented economists such as Rudolph Penner and Herbert Stein question whether the savings of \$424 billion (in three years) could really be achieved. Indeed, Mr. Penner notes that possible savings listed in the report are based on an inflation rate double what is expected.

The task at hand regarding the deficits seems obvious: The White House and Congress must come together to reduce federal spending and raise taxes.

[From the Los Angeles Times, Feb. 6, 1984]

REAGAN'S ITEM-VETO REQUEST IS MATTER OF ENLIGHTENMENT

(By Herman Belz ¹)

The proposal for a constitutional amendment that would give the President the power to veto portions of appropriation bills—the "item veto"—has turned what is ordinarily a technical detail of public administration theory into an unlikely subject of debate. But President Reagan's State of the Union suggestion has set it off, and while pundits speculate about the political maneuvering behind the request, we can learn something about the American political mind from this revival of a time-honored staple of progressive reform.

In the United States we have always wanted limited, responsible, democratic government—as well as rational, efficient and economical government. Unfortunately, these goals are often contradictory. To secure the first three ideals the writers of the Constitution divided and dispersed power, separating the executive from the lawmaking branch and giving the President the veto power as a principal defense against legislative usurpation.

¹ Herman Belz is professor of history at the University of Maryland.

But Americans have also been concerned with efficiency in government, and to this end have created modern administrative mechanisms that rely on bureaucratic expertise and unified control. As technical and arcane as it may seem, the item veto is one of these mechanisms routinely used in state government. The states have tended to serve as laboratories for political experimentation: They are closer to the people and hence more responsive to democratic control.

Indeed, many states have created administrative structures that use the item veto over appropriations as an instrument of executive budgetary control. The argument runs that if the executive is responsible for preparing the budget and getting it through the legislature he must be able to defend his budget estimates by striking or reducing specific items from appropriation bills. In any theory of responsible fiscal management this "partial negative" is a key feature of the executive's expanded administrative authority.

More than a century ago Americans began to think seriously about adapting a decentralized constitutional system to modern administration. The first experiment with the item veto was in the Confederate constitution. In fact, President Jefferson Davis never used it, but Georgia and Texas kept it in their Reconstruction constitutions, and by the turn of the century more than two-thirds of the states had adopted it as a means of restricting legislative power—especially the extravagant spending habits of certain lawmakers. By the 1930s all but 11 states had equipped their governors with the item veto over appropriation bills.

Americans have been willing to experiment in the states for the sake of administrative efficiency. But at the national level they have been far less willing to depart from check-and-balance constitutionalism and to strengthen executive administrative control. In the late 19th century Presidents Ulysses S. Grant, Rutherford B. Hayes and Chester A. Arthur proposed an item-veto constitutional amendment to curb a powerful and prolific Congress that had acquired the habit of adding extraneous (but substantive) riders to appropriation bills, designed to force the hand of the executive.

As notions of modern administration spread in the post-Reconstruction era, dozens of resolutions were introduced in Congress proposing to give the President this additional power by constitutional amendment. In his classic study, *"The American Commonwealth"* (1888), English scholar and diplomat Lord Bryce said that the item veto was a reform "generally desired by enlightened men."

Of course, none of these efforts were successful. In time Congress acquiesced to many of the demands for administrative modernization, but firmly rejected an enlargement of the executive veto. Even a weak President holds a powerful office; Congress did not want to surrender any of its power over the purse. The American people have generally preferred to sacrifice something of administrative efficiency to maintain the centralized structure of power that serves a pluralistic democracy.

This choice has persisted into the 20th Century. When Franklin D. Roosevelt dusted off the old idea and asked Congress to consider it he got nowhere, Dwight D. Eisenhower tried it again in the 1950s, without success. It seems safe to assume that President Reagan's request for an item-veto amendment will also go unheeded.

Current discussions of the item veto have focused on its use as an economizing tool in the battle of the budget. Saving money is surely part of what we mean by efficient administration. The chief attraction of the partial veto, however, has been to strengthen executive administrative capacity.

Liberals who liked the idea of an item veto in the heyday of the liberal activist presidency will naturally find it unacceptable when proposed by a conservative President. Nevertheless, Reagan's request stands in the great tradition of enlightened administrative reform.

It is equally clear (although Congress may not realize it) that resistance to the item veto expresses our still-healthy preference for constitutional restraints over administrative unity and efficiency.

[From the National Journal, Feb. 11, 1984]

CONGRESS PLAYS ELECTION-YEAR POLITICS WITH LINE-ITEM VETO PROPOSAL—THE PERENNIAL ISSUE HAS SOME LEGISLATIVE BACKING, BUT ITS PROSPECTS ARE DIM WITHOUT MORE VOCAL PUBLIC SUPPORT AND UNDERSTANDING OF WHAT IT WOULD DO

(By Richard E. Cohen)

The debate over the line-item veto may provide an apt metaphor for how Congress will handle the budget this year.

As members of both parties scurry around, trying to prove they are serious about cutting the huge federal deficit, they have seized upon the line-item veto proposal as a promising vehicle for showing their good faith about cutting the budget and exposing the rhetorical gamesmanship of their adversaries.

And though it appears unlikely that Congress will enact a veto this year—or that the President would make much use of it if Congress gave him the power—the spirited early skirmishing has exposed the debate's underlying political dilemma.

In a nutshell, both President Reagan and many in Congress feel considerable pressure to seek antidotes to the \$200 billion federal deficit. But the proposal poses problems for both sides. For the President, approval of the plan would force him to play the role of election-year scrooge if he is serious about cutting spending items he deems expendable. For Congress, it would mean ceding the power to satisfy constituents who receive cherished spending items that would become targets of the veto.

Whatever the outcome of the election-year exercise, it appears likely that the conflict will remain alive for future discussions of how to get a handle on federal spending.

A legislative issue that in the past attracted the interest of only a few congressional scholars, the line-item veto became a political hot potato when Congress reconvened. Once a spending limitation device used by the British monarchs to control unruly American colonists, the line-item veto is being used primarily as a vehicle for an elaborate game of partisan one-upsmanship.

It is a game that both sides can play—tightfisted Republicans blasting the "tax and spend" Congress for lacking the discipline to manage federal spending, or deficit-conscious Democrats attacking President Reagan for his unwillingness to offer many specific recommendations for reducing the deficit.

The line-item veto, which would allow the President, subject to congressional review, to cut part of an appropriations bill that already has been enacted, has gained some legislative backing. The Republican-controlled Senate, which last November narrowly defeated a limited line-item veto, might support a new version as part of the deficit "down payment" requested by Reagan. Conservative Republicans in the House have been pressing passage of the veto. But most Democrats, despite the fact that some consider giving Reagan the tool for reducing spending to be an intriguing political prospect, are unlikely to join them.

Although the debate has been cast primarily in budget terms, the line-item veto also raises the issue of the balance of power between Congress and the White House. In backing the proposal, Reagan joined a long line of Presidents of both parties who have called for additional tools to manage federal spending. Perhaps mindful of the attempts a decade ago by President Nixon unilaterally to impound funds, many lawmakers—including some Republicans—are wary about perceived threats to their institutional prerogatives.

Historically, most authorities have contended that a line-item veto proposal must be offered as a constitutional amendment. But the recent flurry of interest has sparked a series of statutory plans to give the President roughly the same power. A statutory change would be simpler and speedier than securing the needed approval of 38 states to ratify an amendment, but a court test of its constitutionality would be likely. One of the principal statutory proposals would modify a relatively uncontroversial procedure in the 1974 Congressional Budget and Impounded Control Act for spending cuts proposed by the President.

Although Reagan Administration officials, especially Treasury Secretary Donald T. Regan, have encouraged approval of the line-item veto, the President's formal position has been curiously ambivalent. In his Jan. 25 State of the Union address, he noted that 43 of the 50 governors have a similar power and that he found it a powerful tool when he was governor of California. Without mentioning the statutory approach, however, he added: "It would be most effective if done by constitutional amendment."

A Washington Post article later reported that he rejected a staff suggestion that he back one of the more expedited statutory proposals. His refusal led some congress-

sional aides to question how eager Reagan is to gain the added budget cutting power, especially in an election year when Presidents typically prefer to bestow benefits rather than rescind them.

Another factor that could limit the legislative progress of the line-item veto is the scarce support it has generated from interest groups, including those that have actively sought to limit federal spending. Lobbyists who have fought for a constitutional amendment to require a balanced budget regard the line-item veto as less important.

Members of Congress who support the veto say that it will not go very far without dramatic evidence of public support. Although a Gallup Organization Inc. poll last November showed that 67 per cent of those questioned approved a line-item veto, lawmakers agree that it is hardly a burning issue and that few constituents understand what it would do.

CALLING THE BLUFF

Given the highly partisan tenor expected in Congress this year, it is not surprising that the line-item veto debate has become primarily a political exercise. But both parties have shown some ingenuity in using the issue against the other side.

At a Joint Economic Committee hearing the day after Reagan's address to Congress, Rep. David R. Obey of Wisconsin, a leader of liberal Democrats, proposed to Reagan that the Administration accept a one-year freeze on defense spending combined with approval of the line-item veto for domestic programs this year. Obey knew that the Administration, which has proposed a 13 per cent increase after inflation for the Pentagon, was unlikely to accept his deal. He was trying to demonstrate the Administration's skewed spending priorities.

The Democrats' attack on the line-item veto has been strengthened by a staff report prepared for the House Budget Committee, which shows that most of the federal budget would go untouched, largely because existing law mandates much of the spending. Of the \$928 billion that would be spent in fiscal 1985 if "current services" were extended (compared with \$925.5 billion in Reagan's budget), the report said the following would be exempt from a line-item veto (amounts are in billions of dollars):

Social security.....	\$187
Interest payments.....	127
Medicare and medicaid	92
Other mandatory programs.....	97
Prior-year commitments:	
Defense.....	90
Domestic.....	78
Total.....	671

Democrats add that Reagan is not likely to use a line-item veto to reduce the non-exempt defense spending of approximately \$173 billion. That leaves the \$83 billion in nondefense discretionary spending as the likely target for cuts.

The criticism of the line-item veto took on a partisan air on Jan. 27 when Rep. Tony Coelho of California, chairman of the Democratic Congressional Campaign Committee, said that he supported Obey's proposed deal. Coelho later said that his comment, which had been cleared with other party leaders, was designed to "call the bluff" of those who advocate the veto power. He added that he sees no prospect that House Democrats will support the line-item veto.

The bluff-calling extends to Republicans, who deride the Democrats' speculation that Reagan is a reluctant advocate of the line-item veto, especially in 1984, and argue that he would use it to his advantage. "To give the President additional pressure over appropriations would be a good thing at this time and he would use it," said Rep. Henry J. Hyde, R-Ill. He added: "I don't think the Democrats will give it to him because they don't want to run the risk. The veto won't solve the deficit problem, but it will be a useful tool and maybe therapeutic of Congress because it focuses attention on wasteful spending."

Republican House Members wasted little time in forcing the issue. Phil Gramm of Texas and Newt Gingrich of Georgia have offered amendments to relatively small authorization bills giving the President authority, subject to congressional override, to cut spending to reduce the federal deficit. Each proposal was easily defeated by voting roughly along party lines.

Aides speculate that a more serious effort may come this spring when Congress will have to approve an increase in the federal debt ceiling. Sen. William L. Armstrong, R-Colo., who advocates more presidential power to cut spending, plans to add a type of line-item veto plan to the debt-ceiling bill. He used the same tactic during

a debt-ceiling debate last November when he co-sponsored with Sen. Russell B. Long, D-La., a version of a veto that would have required the President to cut expenditures if the deficit exceeded its expected ceiling in a given month. The proposal was defeated, 49-46.

Armstrong has introduced a bill that would give the President the power, under the Congressional Budget Act, to rescind spending already appropriated. Under current law, a presidential request for rescission must be approved by the House and Senate within 45 days. Armstrong wants rescissions to become effective unless rejected by the House and Senate within 45 days, a procedure tantamount to a line-item veto. Reversing the presumption, Armstrong argues, "will require Congress to act on rescissions to defeat them, rather than let inaction defeat them, as is now the case."

Figures prepared by the Office of Management and Budget show that 50 per cent of rescissions requested under the law have been approved, with the largest share coming early in Reagan's presidency. The following table lists presidential requests for rescissions by fiscal year the amount approved by Congress; the figures are for budget authority (permission granted by Congress to spend money in the current or in future years) and are in billions of dollars.

	Requested	Approved
Ford:		
1975.....	\$2.7	\$0.4
1976.....	3.6	0.1
1977.....	1.1	0.7
Carter:		
1977.....	1.8	0.7
1978.....	1.3	0.6
1979.....	0.9	0.7
1980.....	1.6	0.6
1981.....	1.1	0.0
Reagan:		
1981.....	15.4	11.7
1982.....	7.9	4.4
1983.....	1.6	0.0
1984 (as of 2/1).....	0.6	

Opponents of enhanced budget rescission authority contend that the relatively few requests that the President made in the past year and his failure to veto a single appropriation bill in 1983 show that he cannot blame existing budget procedures for restricting his ability to cut spending and that his requests for more authority are largely a bluff. "The President could make small reductions here and there but it wouldn't amount to a hill of beans," said an aide to Senate Appropriations Committee chairman Mark O. Hatfield, R-Ore. "This committee has worked long and hard and his frozen nondefense discretionary spending only to see that ignored and thrown back in our face by proponents of the line-item veto."

Willis D. Gradison Jr., R-Ohio, who serves on the House Budget Committee, added that among the several "serious flaws" with the veto are that it would weaken Congress, increase pressure to convert spending programs to entitlements not subject to line-item veto and "encourage Congress to increase appropriations, passing the buck to the President to take the political heat."

CHECKS AND BALANCES

Defenders of the line-item veto contend that it is a reasonable and workable tool and that there is no need to fear abuses. "If Congress handed carte blanche power to the President, that would be one thing," said Howard B. Propst, Armstrong's legislative director. "But our proposal is middle of the road. If the President goes too far, then Congress can call the whistle on him."

Supporters also note that the experience of the 43 states that allow governors to veto an entire appropriation line should alleviate any concern. "It is not seen in those states as being an abrogation of legislative authority," Rep. Robert S. Walker, R-Pa., told the House. "It is seen as a prudent way of managing budgets that tend to get out of control." In 10 states, the governor may also reduce spending.

But critics respond that Congress and the state legislatures have different responsibilities. "The scope of federal power is far broader than the states, which makes a greater concern about abuse," said a Senate aide. "Even if states veto programs for the poor, there is residual federal support for programs to help them." In addition, many state legislatures are in session for only two or three months a year and have limited staff expertise and resources.

Proponents of the change add that the failure in recent years of Congress and the President to address the huge federal budget deficits creates the need for new institutional arrangements, by statute, where possible, or by constitutional amendment. They argue that the line-item veto would be a tool to eliminate "pork barrel" projects of dubious value but of intense interest to a few Members.

"It's an antidote to the practice of coming in on the final night of the session with an appropriations bill worked out by five munchkins working in a garret," Hyde said. "Too many powerful people make out under that system, and we spear-carriers just watch." Hyde's comments illustrate the potentially significant changes that the line-item veto might bring to Congress and the reason why Appropriations Committee leaders are among its most vocal opponents.

OUTLOOK

The congressional debate on the line-item veto has remained largely partisan. But it will focus on specific options at a Senate Judiciary Committee hearing on April 10 on proposals for a constitutional amendment. And given the federal budget problems, statutory action may not be far in the future.

Veto supporters noted, for example, that in early 1980, when Democrats and Jimmy Carter were worrying about a deficit about 20 per cent of the current size, House Majority Leader Jim Wright of Texas proposed to give the President greater flexibility to make rescissions.

In the meantime, congressional aides in both parties agreed there has been little serious discussion of the details of a line-item veto. "It will only jell if Democrats find a political advantage in doing it," said a House Republican leadership aide. "I doubt that will happen soon."

The understatement of a Democratic aide that "no one is marching on Washington for this" pointed out the important role of lobbying groups in forcing changes inimical to the interests of most lawmakers. But leaders of groups that have urged the balanced budget constitutional amendment said they do not expect comparable support for the line-item veto.

"We want the balanced budget-tax limitation amendment ratified and then we'll give the President tools to implement it," said Bill Tobin, vice president of the National Tax Limitation Committee. He added that the two additional states needed to force a constitutional convention to consider the balanced budget issue may take action this spring, forcing renewed congressional attention.

David Keating, executive vice president of the National Taxpayers Union, echoed Tobin's priority for the balanced budget. "The line-item veto could theoretically be important, but the biggest problem we have is that entitlements cover half the budget, and if these are not addressed, a line-item veto would not be helpful to President Reagan."

Hyde, who called the balanced budget amendment "a mirage" and a "pious idea that would not work and could even be harmful," conceded that the better-known proposal stands in the way of the line-item veto. "The veto is much more practical, but grass-roots support won't start unless people understand it."

[From the Wall Street Journal, Feb. 17, 1984]

THE VETO DEBATE: DIFFERENT TIMES, DIFFERENT TEMPER

(By Suzanne Garment)

The other night, I watched a program on public television about the U.S. Congress and did not fall asleep. Surprise No. 2 was that the show actually had prudent and sensible views on the topic. But most significant, the series of which the program is part (on the air now in Washington and in most places in the fall) was put together by Washington's public TV station and the American Political Science Association. Relatively conservative views of what Congress should look and act like have come to dominate the field. The victory comes a decade or so late.

The series is named "Congress: We the People." Edwin Newman is host. The American Enterprise Institute's Norman Ornstein, one of a small group of congres-

sional scholars here without whom local journalists could not set finger to word processor, is series editor and gave me a quick rundown of how the rest of the series will look.

Near the beginning, an episode explains some features of congressional elections. Significantly, we are told that money in these races means not nothing, but not everything, either. The series then looks at congressmen's personal careers and characteristics. The producers press the argument that Congress works better if things are so arranged as to make the members want to stay a long time. The producers also contend that properly representing the country does not require Congress to become a tiny demographic mirror of society as a whole.

Looking at the committees and the floor, the series gives a close-up of all the pressures that lead congressmen to compromise—and says these forces are not such a bad thing. One show leads viewers through some of the elaborate rules that look ridiculous but keep internal conflict from becoming direct and irreparable. The authors give a cold eye to some reforms, such as attacks on the filibuster, that have worn these useful barriers away. The program even makes the heretical argument that the newly powerful lobbies in Washington may actually make Congress more representative, by forcing congressmen to pay more attention to interests that should not always be ignored.

In all these smaller arguments, Mr. Ornstein told me, there was a larger theme that Congress is not so unconscionably organized after all and that we should think twice before letting people muck around with it. I nodded in comfortable agreement. Of course, he added, the day of the liberal reformer cutting up Congress is nearly over. The present headquarters of the "trash the institution movement" is on the right. I stopped nodding.

"For instance," he illustrated, "take the latest example, the line-item veto that some conservatives are promoting. They're of course doing it because they want to shift power from a big-spending Congress to a little-spending president. But they also happen to be proposing a big institutional reform, a transfer of power in the executive.

"Practically speaking, this change would probably give them just the opposite of the policy result they want. This country's whole fiscal history except for the past 20 years has been of Congress restraining the president's spending impulses. Even in the past two decades, the major spending initiatives have been put into place by presidents. Even a Ronald Reagan eventually has to go for things that cost money, like enterprise zones and manned space stations.

"More serious, one of the biggest institutional dangers we're going to be facing now is that new technology—like two-way communication systems—will tempt us to bypass most of our political institutions and go for more plebiscitarian and more dangerous ways of making decisions. Why should any political conservative want to soften up Congress for attacks like that?"

There it was, an expert summation of the conservative case for defending Congress against conservative enthusiasms such as the line-item veto. Those of us who were lucky enough in our youth to have good teachers of American government learned this case well. These were the teachers who protested when the liberals started tearing up electoral and political party rules in the 1960. Now the same well-trained centrist opinion was even-handedly turning the same guns rightward. In the presence of such good sense, you feel like the opportunistic creep kid back in school who would say absolutely anything to get himself elected president of the student council.

The dangers the centrists point to are real. Younger Republican House members seem not to get any visceral satisfaction from a piece of legislation well compromised. From outside Congress, plenty of thoughtless right-wingers attack the institution simply because it is today's obstacle.

But even the good-citizen prudential conservatives are getting restive. True, they say, until recently Congress was a penny pincher; those old days do not look as if they are coming back. We must indeed take care not to trash our institutions and erode their powers. But underneath every argument about balancing the powers lies an assumption, acknowledged or not, that the proper balance will in the long run serve proper political values. When the product is deeply out of whack over time, as fiscal conservatives think it is on spending questions, you are allowed to try fiddling a little without being branded an egregious opportunist. The centrists whom "We the People" presents so well are absolutely right to be warning of the dangers of exercises such as the line-item veto—as long as they do not argue that the only respectable course for the fiscal conservatives is not to think of changing the rules at all.

[From the Washington Post, May 4, 1984]

SENATE REJECTS LINE-ITEM VETO IDEA

(By Helen Dewar)

The Republican-controlled Senate yesterday rejected legislation to give the president line-item veto authority for spending bills, a major expansion of executive power that President Reagan had asked Congress to approve in the form of a constitutional amendment.

However, the key vote of 56 to 34 against the proposal came on the issue of whether it was constitutional to take the action in regular legislation. This blurred the basic question of whether a president should be given the power to knock out individual items in an appropriations bill without vetoing the entire measure.

An earlier procedural vote to table the constitutional objection was razor-thin close, 46 to 45, signaling that the proposal probably had more support than was indicated by the final vote.

But neither vote suggested that the line-item veto proposal could muster a two-thirds vote necessary to pass as a constitutional amendment, as Reagan requested in his State of the Union message three months ago.

The votes came in connection with a pending deficit-reduction measure that previously had prompted little attendance by members. But senators streamed to the floor for the veto debate, which touched on the sensitive issue of congressional turf as well as budgetary control.

Even such Reagan loyalists as Majority Leader Howard H. Baker Jr. (R-Tenn.) split with the president on the line-item veto issue, although Baker and others tried to make the vote turn on the constitutional point.

"I think this is a bad idea," said Baker, warning that a line-item veto would constitute not only a broad new grant of power to the executive branch but also an inducement to Congress to thwart the law by compressing all its appropriations into "one item, one line."

But the most impassioned argument against the proposal came from Appropriations Committee Chairman Mark O. Hatfield (R-Ore.), who called it a "silly idea" that would allow the president "virtually to dictate spending priorities."

"I think we ought to bury [the veto proposal] and forget it was ever raised and maybe ask forgiveness for ever having had such a thought," said Hatfield, with chilly disdain.

The proposal, offered by Sen. Mack Mattingly (R-Ga.), would have allowed the president to veto individual items in an appropriations bill for the next two years, after which the line-item veto authority would expire automatically.

It also would have allowed Congress to override these vetoes by a simple majority vote of both houses, rather than the two-thirds vote now required to override vetoes of appropriations bills and other legislation.

Mattingly contended that the constitutional balance between executive and legislative powers would not have been disrupted because Congress could override vetoes by the same simple majority required to pass the legislation in the first place.

But mainly Mattingly argued that the measure was an urgently needed tool to control spending and deficits, which he contended are beyond control under the current system. Congress, he said, simply couldn't wait for a constitutional amendment. As for the constitutional issue, he added, "That's what you have courts for."

Senate Judiciary Committee Chairman Strom Thurmond (R-S.C.) supported the proposal despite the constitutional objections of Baker and others, saying the two-year period would allow time to test the idea in preparation for a constitutional amendment.

Thurmond acknowledged that the proposal could not now get the two-thirds vote necessary for an amendment, but added, "If it can save billions of dollars, it's certainly worth trying."

Critics of the proposal responded by quoting the Constitution, which provides that any law passed by Congress must be submitted to the president and adds, "If he approves he shall sign it, but if not he shall return it," with Congress empowered to override the veto by a two-thirds vote of both houses. This does not contemplate partial vetoes or majority-vote overrides, the critics said.

"What's an item? We don't have items in [appropriations] bills. Maybe it means he can edit it, I don't know," Budget Committee Chairman Pete V. Domenici (R-N.M.) said in exasperation.

Sen. Lawton Chiles (D-Fla.), ranking Democrat on the Budget Committee, said it wouldn't be the president who would comb through appropriations bills for veto tar-

gets but "some faceless, nameless bureaucrat who wears little green eyeshades * * * [and who] ain't never liked that program nohow."

Moreover, he said it would encourage Congress to approve every politically popular spending scheme it could dream up, on the theory that the president would veto any excesses.

On the final vote, most Republicans supported the line-item veto despite the opposition of Baker and Domenici; most Democrats voted against it. Virginia senators voted for the line-item veto and Maryland senators voted against it.

In related action, the Senate Finance Committee approved legislation to raise the federal debt ceiling from \$1.49 trillion to \$1.69 trillion, high enough to last until after the November elections. The current ceiling is expected to be reached by May 24, the Treasury Department says.

[From the New York Times, May 4, 1984]

SENATE, 56-34, REJECTS NEW VETO AUTHORITY

WASHINGTON, May 3.—The Republican-controlled Senate, in a 56-to-34 vote, today set aside a move to give the President the statutory authority to veto individual items in spending bills.

The vote sustained a point of order, backed by the Republican leadership, that giving the President such authority by act of Congress would be unconstitutional. In January, President Reagan proposed an amendment to the Constitution to give the President the authority to veto sections of bills.

Because the veto came on a point of order, not on that proposal itself, the Senate's sentiment on the merits of the proposal was not expressed as such. In October, the Senate voted 53 to 25 against a sense of the Senate resolution that the President should be given the authority through a constitutional amendment.

The measure, proposed by Senator Mack Mattingly, Republican of Georgia, was offered as an amendment to the deficit reduction package backed by Mr. Reagan and the Senate Republican leadership. Currently, the President must veto an entire bill, even if he is opposed to just a few of the spending items, or sign it into law.

Mr. Mattingly proposed that the President's power to veto individual items could be overturned by a majority vote in the House and the Senate, rather than the two-thirds vote required in the Constitution. He also proposed that the authority would expire after two fiscal years.

But the debate quickly turned to the constitutionality of the proposal. Howard H. Baker Jr. of Tennessee, the Senate majority leader, and others said the proposal would violate the Constitution. Mr. Baker said the only way to give the President this authority would be to amend the Constitution.

Referring to his desire to run for President in 1988, Mr. Baker said "some day I may regret this, but I think this is a bad idea."

The constitutional issue blurred the entire debate. Senator James A. McClure, Republican of Idaho, voted against the leadership on the point of order, but said he would oppose the so-called line item veto on a direct vote.

[From the Wall Street Journal, June 19, 1984]

U.S. MAYORS SEEK LAW TO LET PRESIDENT VETO INDIVIDUAL ITEMS IN BILLS

PHILADELPHIA.—The Democrat-dominated U.S. Conference of Mayors endorsed "line-item" veto authority for the president, a notion long pushed by Republicans.

The mayor's group, meeting here, for the first time called for a constitutional amendment that would let the president veto individual items of bills. Some 42 states already give their governors line-item veto authority as a budget-balancing tool, but the proposed constitutional amendment has never progressed far in Congress.

Democratic mayors backed the resolution because they don't want Republicans to be seen as "the sole repository of sound fiscal policy," said Mayor Lynn Briody of Sunnyvale, Calif., a Democrat who proposed it. With sounder fiscal policy, she said, "we'll have enough money to pay for programs for our cities."

Chicago's Mayor Harold Washington led an unsuccessful floor fight to reconsider the resolution after its passage by voice vote. He argued that a line-item veto would unduly limit the powers of Congress and allow President Reagan to make more "vicious cuts in those areas that have deeply affected the viability of cities."

The line-item veto measure was one of several adopted by the mayor's conference that reflected concern about mounting federal deficits. Another urged cuts in defense spending as well as in benefits that subsidize those who aren't needy, such as some military pensions and some student loans.

[From The Wall Street Journal, Oct. 24, 1984]

AN ITEM VETO WON'T WORK

(By Benjamin Zycher)

Federal spending, now standing at almost a quarter of GNP, shows little hard evidence of reduced overall growth, let alone actual reduction. This is despite the presence of Ronald Reagan in the White House and a Republican majority in the Senate. As a purported means of plugging the budgetary dike—and presumably also as a vehicle to shift blame to Congress for the gap between rhetoric and reality—the administration has proposed that the president be given "item veto" power. This allegedly will reduce the ability of Congress to logroll pork-barrel spending past the president, who would be able to veto the pork without rejecting more-kosher items included in the same spending package. The Grace Commission report contains examples galore of such profligacy, and indeed, Messrs. Reagan and Bush have referred to the report in general terms as a blueprint for federal budget control through an item veto.

Among the myriad recommendations of the Grace Commission is one for sale of federal electrical power at market prices instead of the heavily subsidized rates now prevailing in most cases. Last summer Congress passed a bill extending for 30 years the Hoover Dam contract under which many electricity users in California, Nevada and Arizona are charged a price for this federal power far below its market value. Here was a chance for the White House to exercise, in effect, an item veto on a blatant federal pork-barrel arrangement. Here was a chance to demonstrate, as the president has reminded us, that political considerations play no role in policy decisions. Instead, the administration supported the bill, and the president signed it, accompanied by the loud and conspicuous applause of numerous good Republican burghers and "fiscal conservatives."

MEASURABLE BENEFITS

Moreover, the dynamics given impetus by the presidential campaign are revealing. The president felt compelled politically to seek for Social Security recipients a special cost-of-living increase not mandated under the current formulas. Furthermore, not only are the benefits of current Social Security beneficiaries sacred, but now also those of future recipients, at least for the next four years. And what can we conclude from Vice President Bush's tireless claim, during his exchange with Ms. Ferraro, that various federal welfare programs have grown, not shrunk, during the Reagan administration; and that, presumably, more of the same can be expected during a second Reagan term? Electoral success seemingly is thought to depend upon a perceived level of "compassion" at least equal to that of the New York Times editorial board. It also appears dependent on growth in agricultural and other subsidies that are hardly beneficial to the poor. To what extent is an item veto really usable in this sort of political climate?

It is the nature of democratic processes to subsidize concentrated special interests at the expense of the diffused and more general "public" interest. This is because it is in the political self-interest of politicians to bestow benefits that are measurable, and to impose costs that are not. The item-veto power, in effect, asks the president to swim against this tide by rejecting specific items funded, typically, out of general revenue. The experience of states in this regard is instructive. Some form of item-veto power is held by 43 governors. The aggregate data, summarized in the table nearby, do not support the conclusion that the item-veto power provides an effective constraint on government spending.

The states listed in the table are those lacking item-veto power for the governor. In these seven, state and combined state-local per-capita spending (both are included because what may be a state function in one place is a local responsibility elsewhere) is no higher, and well may be lower, than in states with some form of item veto. Experience at the federal level before and after enactment of the 1974 Congressional Budget and Impoundment Control Act is consistent with the state experience. The power of the president to impound funds became much more restricted beginning about fiscal 1975. Yet the growth rate of real federal spending between fiscal years 1975 and 1984 has been very close to that of the earlier period ending

with fiscal 1974, depending upon the choice of the base year. No clear pattern is evident.

PER CAPITA GENERAL EXPENDITURE, 1981

State	State spending		State and local spending	
	Amount	Ranking	Amount	Ranking
Indiana	\$905	45	\$1,400	48
Maine	1,081	28	1,533	37
Nevada	1,158	24	2,075	9
New Hampshire	850	46	1,512	38
North Carolina ¹	1,021	36	1,421	46
Rhode Island	1,373	9	1,941	14
Vermont	1,246	14	1,747	26
Average for States without item veto	\$1,091		\$1,661	
Average for States with item veto ²	\$1,141		\$1,776	

¹ North Carolina has neither an item veto nor a whole bill veto.

² Excludes Alaska and the District of Columbia, both of which have the item veto and very high per capita spending.

Source: Statistical Abstract of the United States, 1984.

Either the item veto is ineffective, presumably for political reasons, or it encourages the legislatures to behave in ways even more irresponsible than would otherwise be the case. In effect, it would allow congressmen to boast to constituents about all the manna from Washington for which they are battling endlessly while permitting the president to masquerade as the last bastion of frugality, with little net effect on the budget totals.

We must ask also whether an item veto is likely to shift the composition of the budget in appropriate directions. Of the \$925 billion in outlays projected for fiscal 1985, about \$495 billion, primarily interest and entitlements payments, would be immune from an item veto because they are authorized but not appropriated as line items. Congress could change this, of course, perhaps as a means of allowing the president to take the political heat for doing Congress's dirty work, but as we have seen, even Mr. Reagan seems unwilling to step into that void again.

The remaining spending is for defense (primarily) and for discretionary non-defense, or to put it differently, for general-interest programs that (presumably) benefit everyone more or less, and for special-interest programs that benefit particular groups or political coalitions. If the item veto is to be an effective tool for reduction of the budget totals, it is likely also to bias budget-composition choices relatively in favor of programs benefiting special interests. This is because the majority coalition of interests in Congress can stint on spending benefiting everyone in order to subsidize itself. (Sometimes this cuts across budget categories: For example, the practice of dispersing defense facilities geographically is a way to transform defense in part from a general-interest into a special-interest activity.)

While Congress can be viewed as a series of special-interest coalitions, the president is likely to respond, particularly in an era of weakened parties, to special interests in states that are large and competitive in the electoral college. Neither is driven by general-interest pressures, and the preponderance of general-interest items—if that is what defense is—in the “discretionary” budget suggests that an item veto would shift the composition of the budget inappropriately.

The overall problem, of course, is that the institutional constraints on federal-spending growth have undergone substantial erosion in recent years. If the congressional seniority system and other such traditional sources of spending restraint cannot be resurrected, then the answer is to impose spending restraint directly and institutionally, presumably in the form of a constitutional spending limit. Hard experience suggests strongly that the budget can't be cut in piecemeal fashion, and the politics of Social Security spending suggest that the budget can't be cut even in an across-the-board fashion.

A ONE-TIME REDUCTION

Therefore, the large absolute size of the federal sector ought to be written off as equivalent to a one-time reduction in national wealth, and efforts now should concentrate on limiting the growth of federal spending, particularly relative to GNP. The balanced-budget amendment now under consideration imposes this kind of spending-growth constraint, but by proscribing borrowing under normal circumstances may result in too little government investment. For current voters will tend to look unfavorably upon investment spending that bestows benefits in substantial part upon future voters, but which must be financed entirely out of current taxation. Thus, the balanced-budget amendment raises budget-composition issues of its own; a better approach would be a spending limit combined with a budget-balance requirement only for the operating budget.

The constitutional analogue of the inscription on our currency is, "In Politicians We Trust Not." What is needed is institutional reform that shifts the basic incentives of Congress and the president toward spending restraint. The item veto will not do that; it will encourage Congress to approve more spending, and rests in the final analysis upon a hope that presidents systematically will be willing to bear unilaterally the political costs of fiscal discipline. Any such expectation lies in the same class as "The check's in the mail."